

IN THE MATTER OF BABY A.N

RULING

Before me is an application for an adoption order, dated 7th December 2011, said to have been brought under **Sections 157 and 160 of the Childrens' Act No. 8 of 2001** but to which **Sections 154, 156, 158(1) (a) and 4 (e) 159(1) and (7), 160(1),163(1),164 and 170** of the said **Act** and **Section 22** of the **Interpretation and General Provisions Act (Chapter 2 of the Laws of Kenya)** do apply, in any event.

The applicants herein **F.G** (1st applicant) and **Z.A** (the 2nd applicant), a married couple, of [*particulars withheld*], have moved the court, praying that they be authorized to adopt and rename a baby girl presently identified and known as **Baby Awho**, for the purposes of this ruling shall, where necessary, be referred to either as **Baby A**, the "*minor*", *the infant* or the "*child*". Both applicants are Italian Nationals and were in court for the hearing of this application.

The 1st applicant is aged 50 years, while the 2nd applicant is 47 years old. The applicants were married in 1993 and have one other foster-child, **F.M** also adopted from Kenya and who has been living with them since 2009. The adoptive parents are gainfully employed Italy where they currently reside. The 1st applicant is a [*particulars withheld*] and the second [*particulars withheld*]. The family professes the Christian faith and are Roman Catholics. The applicants' marriage is a monogamous union which they both treasure, and are committed to preserve. They share common values and have respect for a harmonious family life and social wellbeing.

The applicants have proposed a new name which they intend to give to the minor once an adoption order is obtained from this court, with authority to rename her as proposed. The applicants have filed the requisite statements and affidavit in support of the application, bearing all the supporting documents as required by the law. These include financial/ income statements and a declaration of assets. Also filed is a home study report recommending them for a second adoption.

On 16th December, 2011, on the applicants' application, **R.A** of P.O. Box[...] Nairobi was appointed the *Guardian ad Litem* for the purposes of this adoption. She has filed a comprehensive report dated 1st February, 2012, primarily stating that **Baby A** has bonded well with the adoptive family, is happily settled in their care and is well taken care of. She also vouches for the adoptive parents' capability to bring up the minor and the brother well and to provide for both children in a manner that will guarantee not only the necessary day to day care and education, but also an inheritance.

In the unlikely event that they become incapacitated or die, before the child attains the age of majority, the adopting parents have appointed **G.R** to be the legal guardian of the adopted child. She has consented so to act. The *Guardian ad Litem* recommends that the applicants be granted the authority to adopt the minor and that the court grants, also, the incidental prayers sought in this application to complete the process.

The applicants have furnished the court with all the documentation necessary to support the *ex parte* Originating Summons as required under the relevant adoption laws and rules. They have produced, *inter alia*, the requisite approval of the Italian Government, through the Juvenile Court of Brescia, to adopt a second Foreign Child, as well as the approval by the Kenyan Adoption Committee of the Directorate of Children's Services. At the hearing of the application, it was proved that **Baby A** was born in 2009 and abandoned at Kakamega Provincial General Hospital. The infant was admitted at the Hospital's nursery for Care and Protection while a suitable home was being sought. On 19th February 2009 the infant was placed with **PEFA Rehema Children's Home Bukura**, where she was later committed on 15th May 2009 by an order of the Children's Court Kakamega. The abandonment was recorded at Kakamega Police Station on 12th December 2009 vide OB NO: 42/2/12/09. Efforts to trace the infant's parents proved futile.

The Kakamega police having formally informed the Children's Home that no claim had been made with them over the infant, **Baby A** was certified free for adoption under a Certificate of Declaration to that effect issued by the Little Angels Network, an accredited adoption society on 30th March 2011. She was thereafter released and placed under the foster care of the applicants on 26th August 2011 under a Foster Care Pending Adoption Agreement entered between them and PEFA Rehema Children's Home. The minor has been under their care and custody since.

The requisite studies and investigations have been carried out in regard to the applicants' suitability to adopt the child and reports duly filed. The report by the Director of Children's services, ordered by this court on 16th December 2012, was filed on 16th January 2011, recommending the adoption and the renaming of **Baby A** by the applicants, who, according to the Director of Children's Services have proved that they are financially, socially and morally suited to permanently fulfil parental responsibilities over the infant, special consideration being given to the fact that they have previously adopted another Kenyan child who is thriving happily under their care in Italy where he has acquired Italian Citizenship.

In considering this application, I have perused the reports filed by the Guardian ad Litem and the Director of Children's Services, and thoroughly examined all the documentation filed in support thereof. The applicants' suitability has been carefully assessed and positive recommendations filed by credible persons. I am satisfied that the applicants do possess the requisite legal capacity to adopt the child, and that they do understand the entire adoption process, and its future implications for themselves as a family and in particular, the need to provide the best for the adopted infant all her life and to guarantee her an inheritance. I find them to be financially able, medically and morally fit to adopt **Baby A**. They have undertaken and bound themselves to bring her up as one of their own, in a healthy, happy and secure environment.

Considering the above, I have no hesitation in allowing the application, being satisfied that the proposed adoption is in the best interests of **Baby A**. Accordingly, the Originating Summons is hereby allowed and orders granted in terms of prayers 3, 4 and 5 thereof. The applicants shall ensure that the undertaking by ASSOCIAZIONE ITALIANA PRO ADOZIONI ERGA PUEROS ONLUS, the Italian adoption agency abides with the terms of its undertaking of 14th March 2011 and in particular, to ensure the filing of annual progress reports on the child with the Little Angels Network for 3 years succeeding their arrival in Italy with the child.

DATED, SIGNED and DELVIERED at NAIROBI this 22nd DAY OF March 2012.

M.G. MUGO
JUDGE

In the presence of :

for the applicants.