

IN THE MATTER OF BABY TGM

RULING

Before me is an application for an adoption order, dated 28TH December 2011, brought inter alia under **Sections 154, 156, 158(1) (a) and 4 (e) 159(1) and (7), 160(1),163(1),164 and 170** of the **Children’s Act, 2001 (Act No.8 of 2001)** and **Section 22** of the **Interpretation and General Provisions Act (Chapter 2 of the Laws of Kenya)** (by dint of which the Adoption Rules under the **Adoption Act (Cap. 143)** (repealed) apply). Although not stated in the Originating Summons, **Section 162 of the Children’s Act** applies with important significance to these proceedings.

The applicants herein, **CJV** (1st applicant) and **MWS** (the 2nd applicant), a married couple, of [**particulars withheld**] **THE NETHERLANDS** have moved the court, praying that they be authorized to adopt and rename a baby girl presently identified and known as **BABY TGM** who, for the purposes of this ruling shall, where necessary, be referred to either as “**Baby G**” “**the minor**” “**child**” or “**infant**”

The 1st applicant is a Dutch National aged 40 years, while the 2nd applicant is also a Dutch National and is 43 years old. The applicants were married in **The Netherlands on 21st May 2004** and have one adopted child aged 4, also adopted in Kenya. Both of them are gainfully employed in the Netherlands, where they currently reside. The applicants grew up as Roman Catholics but do not practice religion any more. Although they state that religion will not play a role in the child’s life initially, they intend to tell the child about different religions since they would rather she makes her own conscious, independent decision in respect to religion. The applicants propose to give their family name to the minor once an adoption order is obtained from this court, with authority to rename her as proposed in the summons, and to secure for her DutchCitizenship.

The applicants have filed the requisite statements and affidavit in support of the application, bearing all the supporting documents for a foreign adoption including their financial statements certificates of good conduct and undertakings by their government and foreign adoption agency, **STICHTING AFRIKA.**

On 27th January 2012, on the applicants' application, **FDO** of P.O. Box [particulars withheld] Nairobi was appointed the Guardian ad Litem for the purposes of this adoption. She has filed a comprehensive report dated 7th February 2012, primarily stating that **Baby G** has bonded well with adoptive parents, is happily settled in their care and is well taken care of. She also vouches for the adoptive parents' capability to bring up **Baby G** well and to provide for her in a manner that will guarantee not only her necessary day to day needs and education but also guarantee her an inheritance

In the unlikely event that they become permanently incapacitated or die, before the child attains the age of majority, the adopting parents have appointed **AIG** and **MBS** to be legal guardians of the minor. The Guardian ad Litem recommends, therefore, that the applicants be granted the authority to adopt **Baby G** while granting, also, the incidental prayers sought in the application, to complete the process.

The applicants have furnished the court with all the documentation necessary to support the exparte Originating Summons as required under the relevant adoption laws and rules. At the hearing of the application, it was proved, with reference to the said documentation that Baby Gift was found abandoned near the pharmacy of the Kakamega Provincial General Hospital on 12th December 2009. She was admitted at the hospital and a report made at the Kakamega police station. The police, after recording a report of the finding, placed the minor under the care and custody of **PEFA REHEMA CHILDREN'S HOME, BUKURA**. Efforts to trace the child's parents proved futile. On 29th January 2010 the child was formally committed to said Home by an order of the Kakamega Children's Court on the recommendation of the Kakamega District Children's Officer. The court has been shown the committal order dated 29th January 2010.

By a letter dated 8th June 2010, the Officer Commanding Kakamega Police Station (OCS) confirmed that no one had come up to claim the minor. On 10th November 2010 **Baby G** was certified free for adoption under a Certificate of declaration to that effect issued by the **Little Angles Network**, an accredited adoption society. She was therefore released and placed under the foster care of the applicants on 27th September 2011 under a Foster Care Agreement entered between them and **PEFA REHEMA CHILDREN'S HOME**, annexed as annexure "S" to the applicants' supporting affidavit. Baby G has been under the applicants' 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 Children's Officer, ordered by this court on 27th January 2012 was filed on 7th February 2012, recommending the adoption and the renaming of **Baby G** by the applicants, who, according to the Director of Children's Services have proved that they are both financially and socially capable of permanently fulfilling parental responsibilities over the minor

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. Additionally, their application has been duly approved by the Adoption Committee of the Directorate of Children's Services. I am satisfied therefore, that the applicants do possess the requisite legal capacity to adopt the minor, 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. I find them to be financially able, medically and morally fit to adopt Baby G. 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 G**. Accordingly, the Originating Summons is hereby allowed and orders granted in terms of prayers 3, 4, 5 and 6 thereof. Further, and in accordance with the undertaking by **STICHTING AFRICA** dated May 2009, the adoptive parents shall ensure that from the date of arrival in the Netherlands with the child and for the next three (3) years, the Dutch Adoption Agency, **STICHTING AFRICA** submits a quarterly report on the child to Little Angles Network, Nairobi, Kenya.

DATED, SIGNED and DELVIERED at NAIROBI this 16th DAY OF March 2012.

M.G. MUGO
JUDGE

In the presence of :

Mr. Mwenda for the applicants.