IN THE MATTER OF BABY D.K

RULING

Before me is an application for an adoption order, dated 14th December 2011, brought inter alia, under **Sections 154, 156(1), 157(1), 158(1) 4(a), 159(1), (4) (6), (7), 160(1)(2)(3)(4), 161,162,163,164,(10)** and **170** of the **Children's Act**,(**No 8 of 2001** and **Section 24** of the **Interpretation and General Provisions Act () (Chapter 2 of the Laws of Kenya**).

The applicants herein **S.M** (1st applicant) **D.M** *(*the 2nd applicant*)*, a married couple, of**GERMANY** have moved the court, praying that they be authorized to adopt and rename a baby boy presently identified and known as **Baby D** who, for the purposes of this ruling shall, where necessary, be referred to either as **Baby D** "the **minor", "the infant"** or "the **child".**The 1st applicant is an Austrian National aged 31 while the 2nd applicant is a German National and aged 36. They were both in court for the hearing of this application.

The applicants were married on 3rd March 2001 and are gainfully employed in Germany where they currently reside. The 2nd applicant is an Industrial Electronics Technician with *(particulars withheld)* and the 1st is a medical assistant with. *(particulars withheld)*.The 1st applicant is said to have no religious inclination but the 2nd professes the catholic faith. Their marriage is a strong and stable monogamous union based on mutual respect and acceptance. They share a

conviction that they are able to offer the adoptive child the most favourable development opportunities, accept him unconditionally and foster his abilities while arising him integrate into their social environment.

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 him 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 employment certificates. Also filed is a home study report recommending them for adoption of a foreign child.

On 20th January, 2012, on the applicants' application, **P.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 **22nd February 2012** primarily stating that **BabyD** 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 well and to provide for him in a manner that will guarantee the opportunity to experience love and nurturing in a conducive family environment that will adequately address both his physical and emotional needs.

In the unlikely event that they become incapacitated or die, before the *child* attains the age of majority, the adopting parents have appointed **D.M**and**R.M** to be the be legal guardians of the adopted child. They have consented so to act. The Guardian ad Litem recommends that the applicants be granted the authority to adopt the minor being of the considered view that the adoption is in the best interests of the minor, as it would provide him a chance to experience love and nature in a conducive family set up.

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. They have produced, inter alia, the requisite approval of the Rhineland Regional Council, Central Adoption Office with the requisite confirmation by the Protestant Adoption Centre that the adoption will receive the relevant legal recognition once the adoption order is filed in Germany. The Kenyan Adoption Committee of the Directorate of Children's Services has also given its approval. At the hearing of the application, it was submitted that **Baby D**was born on or about 4th April 2010and was abandoned behind a house in Nairobi where good Samaritans found him and took him to Nairobi Railways Police Station vide the OB No: 4/4/4/2010. On 4th April 2010, he was admitted at Kenyatta National Hospital. He was discharged on 26th April 2010 and admitted at the NEST Children's Home where he was committed on 16th July, 2010 pursuant to a committal order issued by the Nairobi Children's court. The court has been shown the committal order dated 16th July 2010.

The Nairobi Railways Police Station having formally informed the Children's Home vide the letter dated 29th November 2010 that no claim had been made with them over the infant, **Baby D** was certified free for adoption as per a report to that effect filed herein on 19th January, 2011. A Certificate of Declaration to that effect issued by the Little Angels Network, an accredited adoption society is attached to the report. The baby was thereafter released and placed under the foster care of the applicants on 19th January 2011 under a Care Agreement entered between them and The Nest 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 20th January 2012,was filed on 18th March 2012,

recommending the adoption and the renaming of **Baby D** 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 child.

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 child all his life and to guarantee him an inheritance. I find them to be financially able, medically and morally fit to adopt **Baby D.** They have undertaken and bound themselves to bring him 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 D.** Accordingly, the Originating Summons dated 14th December 2012 is hereby allowed in terms of prayer 3, with the consent of the biological parents being dispensed with. However, the issuance of the adoption order is subject to the production, by the applicants, of an undertaking for the filing of the requisite status reports by the foreign adoption agency, which I was unable to trace in the course of writing this decision.

The Registrar-General shall, upon the issuance of the adoption order, make the necessary entries in the Adoptions Register in recognition of the Adoption.

DATED, SIGNED and DELVIERED at NAIROBI this 24th DAY of May, 2012.

M.G. MUGO

JUDGE

In the presence of :

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for the applicants.