

IN THE MATTER OF BABY M1 ALIAS M.A.N

RULING

Before me is an application for an adoption order, dated 31st January 2012, brought inter alia under **Sections 154, 156, 158(1) (a) 2(b) and 4 (e) 159(1), (7) 160, 163(1), 164 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Act (Chapter 2 of the Laws of Kenya)** (by dint of which the Adoption Rules under the **Adoption Act (Cap. 143)** (repealed) apply).

The applicants herein **H.G.K.M** (1st applicant) and **M.C.S.M** (the 2nd applicant), a married couple, of **NETHERLANDS** have moved the court, praying that they be authorized to adopt and rename a baby girl presently identified and known as **BabyM1** a.k.a. **M.A.N**, who, for the purposes of this ruling shall, where necessary, be referred to either as "**Baby M1**, "the **minor**" or "**the child**". Both applicants are *Dutch* Nationals and were in court for the hearing of this application.

The 1st applicant is aged 34 while the 2nd applicant is 29 years old. The applicants were married on 1st May 2002 and have one other foster-child **M2**, adopted in Kenya on 16th May 2008. The adoptive parents are teachers by profession and are gainfully employed in the **Netherlands** where they currently reside. The adopting parents are evangelical Christians who do not believe in divorce. Theirs is a monogamous marital union strengthened by their ability to overcome hard times and the challenge of childlessness. Their desire to adopt a second child is motivated by their love for children and the need to provide a sibling to **M2**. The applicants have proposed a new name for **Baby M1** which they intend to give once an adoption order is obtained from this court, with authority to rename her as proposed.

The applicants have filed the requisite statements and affidavits in support of the application, bearing all the supporting documents as required by the law. These include certificates of employment and a home study report which highly recommends the applicants as adoptive parents, who have proved capable as such through the previous successful adoption hereinbefore mentioned.

On 10th February, 2012 on the applicants' application, **J.A.M** of P.O. Box [...] Eldoret was appointed the Guardian ad Litem for the purposes of this adoption. She filed a report on 13th March, 2012, primarily stating that **Baby M1** has bonded well with the adoptive family, is happily settled in their care and is well taken care of, particularly as regards to her medical treatment, being HIV positive. She also vouches for the adoptive parents' suitability and capability to bring up the child and the *sister* well and to provide for both children in a manner that will guarantee not only the necessary day to day care and attention given her special need, but also the best upbringing for the adopted minor, **Baby M1**.

In the unlikely event that they become incapacitated or die, before the child attains the age of majority, the adopting parents have appointed **A.K.A.M** and **J.P.W** to be the legal guardians of the adopted child. The two have consented so to act. The Guardian ad Litem recommends that the applicants be granted the authority to adopt the child being of the view that the adoption is in her best interests.

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 Dutch Government, through its Ministry of Justice, 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 submitted that **Baby M1** was born on or about 4th December 2009 and abandoned in Kigumo area by her mother. The matter was reported to the police at Kandara police station vide *OB NO: 4/4/12/09*. She was taken to Kandara Children's Orphanage and later transferred to Nest Children's Home in Limuru. She was later admitted at the Cottolengo Children's Home, after she was discovered to be H.I.V. positive. This was pursuant to a committal order issued by

the Children's Court, Thika on 3rd March 2010. The committal order has been produced before this court.

The Kandara police having (on 29th August 2011) formally informed Cottolengo Children's Home that no claim had been made with them over the infant, **Baby M1** was certified free for adoption under a Certificate of Declaration to that effect issued by the Little Angels Network, an accredited adoption society, on 7th September 2011. She was thereafter released and placed under the foster care of the applicants on 29th October 2011 under a Care Agreement entered between them and Children's Home, annexed as annexure "S" to the applicants' affidavit in support of the adoption application. 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 infant and reports thereof duly filed. The report by the Director of Children's services, ordered by this court on 10th February 2012 and was filed on 1st March 2012, recommending the adoption and the renaming of **Baby M1** by the applicants, who, according to the Director of Children's Services have proved that they are financially and socially capable of permanently fulfilling parental responsibilities over the minor, special consideration being given to the fact that they have previously adopted another Kenyan child, with this court's approval, who is thriving happily under their care in the Netherlands where she has acquired Dutch 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 infant, 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 her life. I find them to be financially able, medically and morally fit to adopt **Baby M1**. They have undertaken and bound themselves to bring her up as one of their own, in a healthy, happy and secure environment as well as grant her the right of inheritance.

Considering the above, I have no hesitation in allowing the application, being satisfied that the proposed adoption is in the best interests of **Baby M**. Accordingly, the Originating Summons is hereby allowed and orders granted in terms of prayer 3, 4 and 5 thereof. I further order and direct that the Registrar General makes the necessary entries in the Adoptions Register in recognition of this adoption as prayed. The applicants shall co-operate with and ensure that the foreign adoption agency, **STICHTING AFRICA** abides with the terms of its undertaking of 17th March 2011, and in particular to ensure the filing of quarterly progress reports on the child with the Little Angels Network Adoption Society for the first 3 years of this adoption.

**DATED, SIGNED and DELIVERED at NAIROBI this
2012.**

24th DAY OF May,

M.G. MUGO

JUDGE

In the presence of :

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for the applicants.