

REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Adoption Cause 103 of 2012

IN THE MATTER OF BABY S.N

JUDGEMENT

1. Before me is an application for an adoption order, dated 21st May 2012, said to have been brought, under **Sections 158, 159 & 160** of the **Children’s Act, 2001 (Act No.8 of 2001)** and **Section 24** of the **Interpretation and General Provisions Act (Chapter 2 of the Laws of Kenya)**. This being an international adoption, Section 162 of the Act also applies, in addition to Sections 163, 164, 169 and 170.

2. The applicants herein **P.A.H** (1st applicant) and **A. B. A.H** (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 **S.N** who, for the purposes of this ruling shall, where necessary, be referred to either as **BabyS** the “*minor*”, the *infant* or the “*child*”. Both applicants are Dutch Nationals and were in court for the hearing of this application.

3. The 1st applicant is aged 39 while the 2nd applicant is 41. The applicants were married on 7th December, 2001 and have two biological children aged 8 and 5 years respectively and are gainfully employed in the Netherlands where they currently reside. The applicants profess the Christian faith, both being protestants and intend to bring up the adoptive child in the same religion. They have a strong, healthy and stable monogamous marriage and 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. They have filed the requisite statements and affidavit in support of the application, bearing all the supporting documents as required by the law.

4. On 15th June 2012, on the applicants’ application, **P.A.A** 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 30th July, 2012, primarily stating that **Baby S** 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** in a manner that will guarantee not only the necessary day to day care and education, but also enable her to lead a full life, and to ensure that she adjusts well to life in a foreign country. In the unlikely event that they become incapacitated or die, before the child attains the age of majority, the adoptive parents have appointed **T.H.D** and **S.M.V.G** to be the legal guardians of the adopted child. The two have consented to so act. The Guardian ad Litem recommends that the applicants be granted the authority to adopt the minor.

5. 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 Foreign Child, as well as the approval by the Kenyan Adoption Committee of the Directorate of Children’s Services. Evidence of their financial standing has also been provided as well as confirmation that the adoptive child will be accorded Dutch citizenship.

6. At the hearing of the application, it was proved that **BabyS** was born on 20th October 2010 and abandoned on 21st October 2010 in the post natal ward of [particulars withheld] Hospital. The matter was reported at Thika Police Station under OB [particulars withheld]. The police, after recording a report of the find referred the infant to the Rehema PEFA Home where she was admitted for protection and care. Efforts to trace the infant’s parents have proved futile.

7. On 17/11/2010 the infant was formally committed to Rehema Home under a committal order issued by the Children’s Court, Thika, produced before court among the exhibits. The Thika police having formally informed the foster home that no claim had been made with them over the infant, **Baby S** was certified free for adoption under a Certificate of Declaration to that effect issued by the Little Angles Network, an accredited adoption society on 30th November, 2010. She was thereafter released and placed under the foster care of the applicants on 20th February 2012 under a Foster Parent Agreement entered between them and Rehema PEFA Home, produced as annexure “PB 6” to the applicants’ affidavit in support of their application. The minor has been under their care and custody since.

8. The requisite studies and investigations have been carried out in regard to the applicants’ suitability to adopt the infant and reports duly filed. The report by the Children’s Officer, ordered by this court on 15th June 2012 was filed on 11th July 2012, recommending the adoption and renaming of Baby **S** 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 child.

9. 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 other documentation filed in support thereof. The applicants’ suitability has been carefully assessed and positive recommendations filed by credible persons. I am satisfied that they do possess the requisite legal capacity to adopt the infant, and that they do understand the entire adoption process, and its future implications, for them and their biological children, 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 S**. They have undertaken and bound themselves to bring her up as one of their own, in a healthy, happy and secure environment.

10. Considering the above, I have no hesitation in allowing the application, being satisfied that the proposed adoption is in the best interests of **Baby S**. Accordingly, the Originating Summons is hereby allowed and orders granted in terms of prayers 2, 3 and 4 thereof, with the consent of the child’s biological parents being dispensed with. Further, and in accordance with the undertaking by **STICHTING AFRICA** dated 17th March 2011, the adoptive parents shall co-operate with and ensure that from the date of arrival in the Netherlands with the child and for the next three (3) years, the said Dutch Adoption Agency, **STICHTING AFRICA** submits a quarterly report on the child to Little Angles Network, Nairobi, Kenya.

DATED, SIGNED and DELIVERED at NAIROBI this 12th DAY OF October, 2012.

M.G. MUGO
JUDGE

In the presence of:

.....**for the**
applicants.