



## IN THE MATTER OF BABY A.R.

### JUDGEMENT

1. Before me is an application for an adoption order, dated 21<sup>st</sup> May, 2012 said to have been brought 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 No. 8 of 2001 **Section 22** of the **Interpretation and General Provisions Act (Chapter 2 of the Laws of Kenya)**. This being a foreign adoption, Section 162 of the Children's Act also applies.
2. The applicants herein **RM** (1<sup>st</sup> applicant) and **RC** (the 2<sup>nd</sup> applicant), a married couple, of **VIA LEORNADO DA VINCI 14/ B, LASTRA A SIGNA ITALY**, have moved the court, praying that they be authorized to adopt and rename a baby boy presently identified and known as **Baby A** who, 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.
3. The 1<sup>st</sup> applicant is aged 44 years, while the 2<sup>nd</sup> applicant is 48 years old. The applicants were married on 9<sup>th</sup> July 2004 at the registrar's office, Carmignano Municipality, Italy, and have one other foster-child, **RM** of North African Origin, adopted on 24<sup>th</sup> March 2007 and who has been living with them since. The adoptive parents are gainfully employed in Italy where they currently reside. The 1<sup>st</sup> applicant is a Senior Sales Manager and the second an International Projects Manager. The family professes the Christian faith and are 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.
4. 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 employment records, financial/ income statements, declaration of income and tax certifications. Also filed is a home study report and a court decree of suitability for a second adoption.
5. On 25<sup>th</sup> May, 2012, on the applicants' application, **RAO** of P.O. Box [...] Nairobi was appointed the Guardian ad Litem for the purposes of this adoption. She has filed a comprehensive report dated 20<sup>th</sup> June, 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 the adoptive child not only the necessary day to day care and education, but also an inheritance.
6. In the unlikely event that they become incapacitated or die, before the child attains the age of majority, the adopting parents have appointed **PC** to be the legal guardian of the adoptive 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.
7. 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 Florence, 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, with documentary support, that **Baby A** was born on 18<sup>th</sup> August 2010 and abandoned on the same day in a pit latrine at Riabai. He was rescued by a police officer and a record of the abandonment made vide OB NO. 42/18/08/2010. The infant was admitted at the Kiambu Hospital and later committed, initially for 6 months, to Love a Child Children Home Nyeri by the Kiambu Children's Court on 1<sup>st</sup> October 2010. He was again committed to

the same home by the Nyeri Children's Court on 20<sup>th</sup> April 2011 vide a committal order of that date. On 1<sup>st</sup> September 2011, the child was committed to the Nest Children's Home. Efforts to trace the infant's parents have proved futile.

8. The Kiambu 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 Kenyans to Kenyans Peace Initiative Adoption Society, an accredited adoption society, on 25<sup>th</sup> January, 2012. He was thereafter released and placed under the foster care of the applicants on 18<sup>th</sup> February 2012 under a Foster Care /Release Agreement entered between them and the Nest Children's Home. The minor has been under their care and custody since.

9. 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 25<sup>th</sup> May, 2012, was filed on 18<sup>th</sup> June 2012, 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 African child who is thriving happily under their care in Italy.

10. 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 infant all his life and to guarantee him 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 him up as one of their own, in a healthy, happy and secure environment.

11. 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 1, 2, 3, and 4 thereof. The applicants shall co-operate with and ensure that **ASSOCIAZIONE NAZIONALE PUPPLICHE ASSISTENZE**, the Italian adoption agency, abides with the terms of its undertaking of 12<sup>th</sup> July, 2010 and in particular, to ensure the filing of quarterly progress reports on the child with the Kenya Peace for Peace Initiative for 3 years succeeding their arrival in Italy with the child.

**DATED, SIGNED and DELIVERED at NAIROBI this 11<sup>th</sup> DAY OF October, 2012.**

**M.G. MUGO**  
**JUDGE**

**In the presence of :**

**Mr. Mwenda for the applicants.**