

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO.124 OF 2010

IN THE MATTER OF THE CHILDREN ACT, 2001

AND

IN THE MATTER OF D.W *aka* D.W.M.G – MINOR

M.D.G.....1ST APPLICANT

B.W.G.....2ND APPLICANT

J U D G M E N T

The applicants, M.D.G and B.W.G are German nationals. They were married on 1st August 2003. The 1st applicant works as a technologist with a G[...]company whilst the 2nd applicant works as software developer with another German company. The applicants have not been blessed with biological children due to medical reasons. The applicants wish to adopt a child, specifically a child from Kenya. The applicants approached the relevant authorities in Germany with a view to securing the requisite approvals to enable them adopt a child from Kenya. The applicants were assessed by the City of Leipzig's Youth Welfare Office which is mandated by law to deal with adoption cases. On 2nd February 2010, the said office issued a certificate confirming the applicants as suitable persons to adopt a child under German law. The applicants were further assessed by Eltern fur Afrika e.V., a German International Adoption Agency which deals with foreign adoptions. The applicants were assessed as qualified to adopt a foreign child. The applicants' application to adopt a child from Kenya was considered by the National Adoption Committee of Kenya. On 14th April 2010, the National Adoption Committee approved the applicants' application to adopt a child from Kenya. A certificate to that effect was duly issued on 18th April 2010. Baby D.W (the child), the subject of these adoption proceedings, was on 6th October 2009 found abandoned at W estate in Thika township. This was soon after his birth. The child was rescued by a good Samaritan and taken to Thika District Hospital. A report was made to Thika police station. After being medically attended to, the child was taken to Thomas Barnado Home for care pending formal court proceedings. On 20th January 2010, the child was committed to the said Children's Home pending formal adoption proceedings. The parents of the child have so far not been traced. In the circumstances therefore, this court dispenses with the consent of the biological parents to the proposed adoption by the applicants. Kenya Children's Home, the Adoption Society which conducted pre-adoption investigations was satisfied that the child was indeed free for adoption. To that effect, it issued a certificate declaring the child free for adoption. The certificate is dated 3rd May 2010.

The court read the reports prepared by Kenya Children's Home, the local adoption society, Eltern Fur Afrika e.V, the foreign adoption society, the Director of Children's Services and by A.N, the guardian ad litem. The court had the advantage of reading the reports prepared by the approved authorities in Germany. All the above reports are favourable and recommend the applicants' application to adopt the child. This is an international adoption. There are certain conditions that the applicants must fulfill before this court can allow them to adopt the child. The first condition is that the applicants must be approved by the relevant adoption authorities in their country of origin. In the present case, the applicants have been assessed and approved by the relevant authorities in their country of origin, Germany. This court had the benefit of reading the report prepared by the foreign adoption society. This court is satisfied that the applicants have been approved by the relevant authorities in Germany to adopt a foreign child, and specifically a Kenyan child. The second condition is that the applicants must be approved by the National Adoption Committee in Kenya to adopt a child in Kenya. The applicants have been assessed by the said National Adoption Committee. A certificate has been issued by the said committee approving the applicants' application to adopt a child in Kenya. The third condition is that the applicants must satisfy the court that they have fulfilled the legal requirements regarding the adoption, including having custody of the child for a sufficient period to enable bonding to take place. This period must not be less than three (3) months. It was clear to the court that the applicants have fulfilled all the legal requirements in respect to international adoption. The applicants have had the custody of the child since 11th June 2010. In the period that the child has been in their custody, the child has bonded with them. This was evident from the reports prepared by the Director of Children's Services, the guardian ad litem and the local adoption society. The applicants have established that they have the financial and emotional capacity and capability to take care of the child.

Having evaluated all the reports on record, and the applicants' application seeking to be granted permission to adopt the child, it was clear to this court that it would be in the best interest of the child for the application for adoption to be allowed. The applicants have given an undertaking that they shall allow access to the approved adoption society in their country of origin to undertake post-adoption supervision for a period of three years from the time of the issuance of this adoption order. The applicants have executed an undertaking that if this court grants the adoption order, they will permanently assume all the parental rights and duties of the biological parents in respect of the adopted child; they shall treat the adopted child as if he was born to them in their marriage; they have been made aware that once the adoption order is issued, it shall be final and binding during the lifetime of the child that they shall adopt; that the child shall have the right to inherit their property; that an adoption order cannot be recanted, and further, that they shall not give up the child owing to any subsequent unforeseen behaviours or other changes in the child; that the adoption society in Germany (foreign adoption society) shall provide annual follow up reports on the progress of the child to the adoption society in Kenya (local adoption society) for a period of three (3) years from the date of the arrival of the child in Germany; that the applicants undertake to allow the representatives of the foreign adoption society in Germany free access to the child at any reasonable time. The applicants further give an undertaking that they shall accord their citizenship to the child.

In the premises therefore, this court finds that the applicants have met the criteria set for international adoptions. The applicants, M.D.G and

B.W.G are hereby authorized to adopt baby DW. The child shall henceforth be known as D.W.M.G. C.K, Dr. B and Dr. A.P are hereby appointed to be the legal guardians of the child should misfortune befall the applicants. The Registrar General is hereby directed to enter this order in the Adoption Register. The guardian ad litem is hereby discharged. It is so ordered.

DATED AT NAIROBI THIS 18TH DAY OF JANUARY, 2011

L. KIMARU

JUDGE