



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**ADOPTION CAUSE NO.164 OF 2010**

**IN THE MATTER OF THE CHILDREN ACT, 2001**

**AND**

**IN THE MATTER OF BABY A.W.A (MINOR)**

**A. D. B.....1<sup>ST</sup> APPLICANT**

**V.T.....2<sup>ND</sup> APPLICANT**

**J U D G M E N T**

The applicants, A.D.B and V.T, are Italian nationals. They were married in Italy on 7<sup>th</sup> July 2006. The applicants do not have biological children of their own due to medical reasons. The 1<sup>st</sup> applicant works as an administrative instructor whilst the 2<sup>nd</sup> applicant is a p employee. The applicants wish to adopt a child, specifically a foreign child from Kenya. The applicants were on 6<sup>th</sup> July 2009 assessed by the Mehala Child & Family, Merate (LECCO), Italy, a foreign adoption society duly recognized by the government of Italy to undertake assessments for the purpose of international adoptions. A report by the said organization is on record and recommends the adoption. In compliance with Italian Adoption Law, the applicants were further assessed by the Family, Childhood and Evolutionary Age Service of the City of Milan. The said report recommends the adoption. The Juvenile Court of Milan considered the applicants' application to adopt a foreign child. It issued a decree allowing the applicants to adopt a foreign child. On 31<sup>st</sup> March 2010, the Kenyan National Adoption Committee considered the applicants' application to adopt a child in Kenya. The said committee approved the applicants' application to adopt a child in Kenya. A certificate to that effect was issued on 14<sup>th</sup> April 2010.

Baby A.W.A was born on 4<sup>th</sup> July 2005 at Vihiga District Hospital. The biological parents, M.A and W.N, were said to be related. According to the customs of the community, such children cannot be brought up within the community. For that reason, the child's mother gave up the child, through the Vihiga District Children's Office, for adoption. The mother signed the first consent giving up the child for adoption on 6<sup>th</sup> July 2005. The maternal grandparents of the child also signed consent surrendering the child for adoption. The child was admitted to New Life Home Trust, Kisumu on 6<sup>th</sup> July 2005. On 28<sup>th</sup> July 2005, the Vihiga Children's Court committed the child to the custody of the said Children's Home pending further court proceedings. The mother of the child gave her final consent to the proposed adoption on 15<sup>th</sup> August 2005. This court is satisfied that the biological mother of the child gave her consent to the proposed adoption. The child was declared free for adoption on 9<sup>th</sup> December 2009. A certificate to that effect was issued by Little Angels Network, a duly approved adoption society. The child was placed under the custody of the applicants on 2<sup>nd</sup> August 2010 for compulsory foster care pending these adoption proceedings. Since then, the child has been in the care of the applicants.

The court read the reports prepared by Little Angels Network, the local adoption society, the Mehala Child & Family, Merate (LECCO), Italy, the decree of the Juvenile Court at Milan, the Director of Children's Services and by P.A. A, the guardian and litem. The court had the benefit of reading the reports prepared in Italy in regard to the applicants' application to adopt a foreign child. 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, Italy. 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 Italy 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 of time 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 adoptions. The applicants have had the custody of the child since 2<sup>nd</sup> August 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 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 Italy (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 Italy; that the applicants undertake to allow the representatives of the foreign adoption society in Italy 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 adoption. The applicants, A.D.B and V.T are hereby authorized to adopt baby A.W.A. The child shall henceforth be known as A.W B. F.B is 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 28<sup>TH</sup> DAY OF FEBRUARY, 2011**

**L. KIMARU  
JUDGE**