



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**ADOPTION CAUSE NO.166 OF 2010**  
**IN THE MATTER OF THE CHILDREN ACT, 2001**  
**AND**  
**IN THE MATTER OF BABY D.S (MINOR)**  
**A-J.A.....**  
**.....1<sup>ST</sup> APPLICANT**  
**T. S.A.....**  
**.....2<sup>ND</sup> APPLICANT**

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

The applicants, A-J.A and T.S.A, are Finnish citizens. They were married in Finland on 13<sup>th</sup> October 2001. The applicants do not have biological children of their own due to medical reasons. The 1<sup>st</sup> applicant works as a teacher in a primary school in Finland. The 2<sup>nd</sup> applicant works as a school psychologist also in Finland. The applicants wish to adopt a child, specifically one from Kenya. The applicants were assessed by the Finnish Adoption Board under the Finnish Ministry of Social Affairs and Health in 2009. On 11<sup>th</sup> November 2009, the said Board granted permission for the applicant to adopt a child from a foreign country. The applicants were further assessed by Interpedia, a foreign adoption society based in Finland which has been duly approved by the National Adoption committee of Kenya. The said adoption society has filed a report which is favourable and recommends the applicants' application to adopt the child. The applicants were further on 31<sup>st</sup> March 2010, assessed by the National Adoption

Committee of Kenya. The said National Adoption 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 D.S, the child who is the subject of these adoption proceedings was presumed to have been born on 29<sup>th</sup> December 2008. On 7<sup>th</sup> March 2009, the mother of the child left the child under the care of one J.A who then operated a kiosk next to Kibuye Catholic Church in Kisumu. The mother of the child had requested the said J.A to hold the child as she ferried some luggage to a motor vehicle. However, the mother of the child did not return. The said J.A reported the incident to Kisumu central police station. She was allowed to stay with the child overnight in the hope that the mother would return to take away the child. That did not happen. On 9<sup>th</sup> March 2009, she was directed to take the child to the Kisumu District Children's Office for home placement. The child was taken to New Life Home Trust, Kisumu where he was admitted on the same day. On 18<sup>th</sup> March 2009, the child was committed to the custody of the said Children's Home by the Winam Children's Court pending further court proceedings. Meanwhile, investigations continued to establish the whereabouts of the biological parents of the child. The biological parents of the child have so far not been traced. This court therefore dispenses with the consent of the biological parents of the child for the purposes of these adoption proceedings. The child was declared free for adoption by Little Angels Network, an adoption society. A certificate to that effect was issued on 31<sup>st</sup> March 2010. The child was placed under the custody of the applicants on 3<sup>rd</sup> August 2010 for compulsory foster care pending these adoption proceedings. Since then, the child has been in the care and custody of the applicants.

The court read the reports prepared by Little Angels Network, the local adoption society, Interpedia, the Finnish foreign adoption society, the Director of Children's Services and by K.M.N, the guardian ad litem. The court had the benefit of reading the reports prepared in Finland 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, Finland. 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 Finland 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 adoption. The applicants have had the custody of the child since 3<sup>rd</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 requisite 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 behaviour or other changes in the child; that the adoption society in Finland (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 Finland; that the applicants undertake to allow the representatives of the foreign adoption society in Finland 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-J.A and T.S.A are hereby authorized to adopt baby D.S. The child shall henceforth be known as D.J.S. A. T. P.T and R.E.T 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 28<sup>TH</sup> DAY OF FEBRUARY, 2011**

**L. KIMARU**  
**JUDGE**