



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
ADOPTION CAUSE NO.176 OF 2010
IN THE MATTER OF THE CHILDREN ACT, 2001
AND
IN THE MATTER OF BABY A (MINOR)

M.C.M.....1ST
APPLICANT

L.M. M.....2ND
APPLICANT

J U D G M E N T

The applicants, M.C.J.M and L.M.M, are Swedish citizens. They were married in Swedin on 14th August 2004. The applicants have not been blessed with biological children of their own due to medical reasons. The 1st applicant is employed as a supplier performance development manager in a private company based in Sweden while the 2nd applicant is a pre-school teacher in Sweden. The applicants desire to adopt a child, specifically a child from Kenya. In order to qualify to adopt a child from Kenya (in an inter-country adoption) in accordance with the Swedish Adoption Laws, the applicants were assessed by the Family Legal Affairs Department of the Individual and Family Care Sector of the municipality of Lerum in Sweden. A report was duly prepared which is annexed to the application. The

report is favourable and recommends the proposed adoption. A certificate of consent of the Social Welfare Committee of Lerum municipality was issued to the applicants authorizing them to adopt a child from another country. The Swedish Embassy in Nairobi confirmed that Sweden shall recognize the adoption order issued by the Kenya court under **The Hague Convention on Inter-country Adoptions**. The said Embassy further confirmed that the applicants had fulfilled all the legal requirements in Sweden to enable them adopt a child from Kenya. The applicants were further recommended by Children Above All – Sweden, a foreign adoption society duly approved by the Kenya National Adoption Committee to conduct pre- and post-adoption supervision of Children adopted from Kenya. The said National Adoption Committee sitting on 23rd June 2010 approved the applicants' application to adopt a child from Kenya. A certificate to that effect was issued to the applicants on 21st July 2010.

Baby A (the child) is presumed to have been born on 28th December 2009. He was found abandoned within the K slums in Nairobi. He was rescued by good samaritans and taken to Shauri Moyo police station. A report of the abandonment was recorded at the said police station. The police referred the child to Thomas Barnado House for care and protection pending further investigations. On 5th February 2010, the child was placed under the care and custody of the said Children's Home pending further court proceedings. Efforts by the police to trace the whereabouts of the biological parents of the child have proved unsuccessful. This court therefore dispenses with the consent of the biological parents of the child for the purpose of these adoption proceedings. The child was declared free for adoption by Kenya Children's Home adoption society on 13th July 2010. A certificate to that effect was issued and is in the court file. The child was placed under the care and custody of the applicants on 16th August 2010 for compulsory foster care pending these adoption proceedings.

The court read the reports prepared by Kenya Children's Home, the local adoption society, the Social Welfare Committee of the municipality of Lerum, Sweden, the Director of Children's Services

and by S.M.M, the guardian ad litem. The court had the benefit of reading the reports prepared in Sweden in regard to the applicants' application to adopt a foreign child. The court also read the comments made by the Swedish Embassy in Nairobi. 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, Sweden. 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 Sweden 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 to that effect has been issued by the said committee approving the applicants' application to adopt a child from 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 16th 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 behaviour or other changes in the child; that the adoption society in Sweden (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 Sweden; that the applicants undertake to allow the representatives of the foreign adoption society in Sweden 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.C.J.M and L.M.M are hereby authorized to adopt baby A. The child shall henceforth be known as M.A. V. M. M.L and E.L 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 28TH DAY OF FEBRUARY, 2011

**L. KIMARU
JUDGE**

