



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

ADOPTION CAUSE NO.165 OF 2010

IN THE MATTER OF THE CHILDREN ACT, 2001

AND

IN THE MATTER OF BABY N (MINOR)

P. T.D.....1ST APPLICANT

D.I. D.....2ND APPLICANT

J U D G M E N T

The applicants, P.E.T.D and D.I.D, are respectively Swedish and British nationals. They were married on 3rd August 2002. The applicants have not been able to have children of their own due to biological reasons. The 1st applicant is a Home Support Worker while the 2nd applicant is an Equity Research Editor. The applicants reside in Bro, Sweden. The applicants desire to adopt a child, specifically a child from Kenya. In order to be able to adopt a child from Kenya, the applicants were assessed by the Municipal Social Welfare Committee of Upplands-Bro on behalf of the Swedish government. The Municipal Social Welfare Committee is charged with the responsibility of assessing persons wishing to adopt a child domiciled abroad under the **Swedish Social Services Act**. The said Social Welfare Committee wrote its report on 24th November 2009. The report is favourable and recommends the proposed adoption. It was apparent that the said Social Welfare Committee was to some extent influenced

in its decision by the fact that the applicants had previously adopted another child in 2007. The Swedish Inter-country Adoption Authority confirmed in writing that once the Municipal Social Welfare Committee of Upplands - Bro gave its approval to the applicants to adopt a child domiciled in another country, such approval suffices for the purposes of the 1993 Hague Convention on Intercountry adoption. The applicants were further assessed and approved by Children Above All - a foreign adoption society based in Sweden which has been duly approved by the Kenya National Adoption Committee to conduct pre and post-adoption supervision of the applicants in Sweden. The National Adoption Committee of Kenya sat on 18th May 2010 and approved the applicants' application to adopt a child from Kenya. A certificate to that effect was issued to the applicants on 7th June 2010.

Baby N, the child that is the subject of these adoption proceedings, was abandoned by her biological mother at quarry area in Embakasi. She was abandoned on 25th May 2009. At the time of her abandonment, she was presumed to have been born on 16th May 2009. A good Samaritan took the child to Embakasi police station. A report was recorded in the station's occurrence book on the same day. The child was on the same day admitted by the police at Thomas Barnados Children Home. The child was committed to the care and custody of the said Children's Court in Nairobi pending further court proceedings. Efforts by the relevant authorities, including the police, to trace the whereabouts of the biological parents of the child have been in vain. In the circumstances, this court dispenses with the consent of the said biological parents of the child for the purposes of these adoption proceedings. The child was declared free for adoption on 16th February 2010 by Kenya Children's Home, a duly approved local adoption society. A certificate to that effect was issued and is in the court file. The child was placed under the custody of the applicants on 3rd 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, by the Municipal Social Welfare Committee of Uppland - Bro, Sweden which is charged by the Swedish government with the responsibility of conducting pre-adoption assessment of the applicants, by the foreign adoption committee, by the Director of Children's Services and by M.K.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. 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 permanent residence. In the present case, the applicants have been assessed and approved by the relevant authorities in their country of permanent residence, 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 child from Kenya.

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 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 3rd August 2010. In the period that the child has been in their custody, the child has bonded with the applicants. 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, and the fact that the applicants have previously adopted another 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 she 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 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 adoption. The applicants, P.E.T.D and D.I.D, are hereby authorized to adopt baby N. The child shall henceforth be known as H.N D. R.T.A and K.A.K.A 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 14TH DAY OF MARCH, 2011

L. KIMARU

JUDGE