



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

ADOPTION CAUSE NO.159 OF 2010

IN THE MATTER OF THE CHILDREN ACT, 2001

AND

IN THE MATTER OF S.F – MINOR

P.B.....
.....1ST APPLICANT

M.M.J.B-
B.....
..... 2ND APPLICANT

J U D G M E N T

The applicants, P.B and M.M.J.B-B, are Dutch citizens. They were married under the **Dutch Civil Law** in The Netherlands on 2nd March 2004. The applicants have not been able to have children of their own due to medical reasons. The 1st applicant is employed as a manager in a company in A, in The Netherlands while the 2nd applicant is employed as a post office clerk in the same town. The applicants desire to adopt a child, specifically a child from Kenya. In order to adopt a child from Kenya, The Netherlands' Ministry of Justice, which deals with inter-country adoptions instructed the Child Welfare Council of Arnhem to investigate the applicants with a view to establishing their suitability to adopt a foreign child. The report prepared by the said council, which is annexed to the application, is favourable and recommends to the said Ministry of Justice to grant permission to the applicants to adopt a foreign child. On 14th July 2009, the said Ministry of Justice granted permission to the applicants to adopt a child. The Ministry of Justice did on 6th July 2010 approve the applicants' application to specifically adopt the child that is the subject to these adoption proceedings. The applicants were further assessed by Stichting Africa-Netherlands, a foreign adoption society based in The Netherlands. This society has been approved by the National Adoption Committee of Kenya to conduct pre- and post-adoption supervision of the children adopted from Kenya. The said foreign adoption society recommends the proposed adoption by the applicants. The National Adoption Committee of Kenya approved the applicants' application to adopt a child from Kenya on 14th April 2010. A certificate to that effect was issued on 18th May 2010.

Baby SF, the child that is a subject of these adoption proceedings, was presumed to have been born on 4th May 2009. The child was abandoned at the City Mortuary Roundabout along Mbagathi Way in Nairobi on 12th May 2009. The child was rescued and taken to Nairobi Women's Hospital. The child was later committed to New Life Home Trust for care and protection by the Children's Court, Nairobi on 24th February 2010. Since being admitted to the said Children's Home, no one has come forward to claim the child. The relevant authorities have been unable to trace the biological parents of

the child. In the circumstances therefore, this court dispenses with the consent of the said biological parents. The child was declared free for adoption on 19th May 2010. A certificate to that effect was issued by Little Angels Network, a duly approved adoption society. The applicants took the custody of the child for compulsory foster care on 26th July 2010 pending these adoption proceedings.

The court read the reports prepared by Little Angels Network, the local adoption society, by the Council for Children Welfare at Arnhem in The Netherlands, by the Director of Children's Services and by HAM, the guardian ad litem. The court had the benefit of reading the reports prepared in The Netherlands in regard to the applicants' application to adopt a child from another country. 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, The Netherlands. 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 The Netherlands 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 26th

July 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 The Netherlands (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 The Netherlands; that the applicants undertake to allow the representatives of the foreign adoption society in The Netherlands 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, P.B and M.M.J.B-B are hereby authorized to adopt baby S.F. The child shall henceforth be known as S. F. B. M.B and W.R.S 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 11^H DAY OF MARCH, 2011

L. KIMARU

JUDGE