

IN THE MATTER OF THE CHILDREN ACT, 2001

AND

IN THE MATTER OF BABY P. 2 *alias* J – MINOR

N.A.K.....

.....1ST APPLICANT

J.A.M.K.....

.....2ND APPLICANT

J U D G M E N T

The applicants, N.A.K and J.A.M.K, are Swedish citizens. They were married in Sweden on 31st December 2004. Both applicants are psychologists employed in Sweden. The applicants were motivated to seek the adoption of a child because they cannot have biological children of their own due to medical reasons. The applicants wish to adopt a child specifically from Kenya. In order to adopt a child from Kenya, the applicants were assessed by Halmstad Social Welfare Committee of the Municipality of Halmstad under the **Swedish Social Services Act**. This law enables the Social Welfare Committee of the Municipality that the applicants are resident to make a decision in regard to whether the applicants are qualified to adopt a child, especially a foreign child. The said report is attached to the applicants’ application. It is favourable and confirm the applicants as suitable persons to adopt the child. The Swedish Intercountry Adoption Authority gave an undertaking that it shall recognize the adoption order granted by this court if the applicants fulfill the conditions set under the 1993 Hague Convention on Intercountry Adoptions. The applicants were further assessed by Children Above All Adoption Society, Sweden. The said organization recommend the proposed adoption. The applicants sought the approval of the National Adoption Committee of Kenya to be allowed to adopt a child from Kenya. The said committee sat on 21st July 2010. It approved the applicant’s application. A certificate to that effect was issued on 31st August 2010.

Baby P.2 alias J (the child) was on 1st December 2009 born at Thika District Hospital. The child was unwell from birth. He was admitted at the postnatal ward for medical care. The mother of the child absconded from the hospital

leaving behind the child. The matter was reported to Thika police station on 30th December 2009. The child was discharged from the hospital and admitted to Thomas Barnados Children Home. The Children's Court at Thika committed the custody of the child to the said Children's Home for care and protection pending these adoption proceedings. Effort by the police, and other relevant authorities to trace the whereabouts of the biological parents of the child have been in vain. 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 on 10th August 2010 by Kenya Children's Home 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 5th October 2010 for compulsory foster care pending these adoption proceedings.

The court read the reports prepared by Kenya Children's Home Adoption Society, by the Director of Children's Services and by AN, 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 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 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 5th October 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, by the guardian ad litem and by 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 shall execute 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, N.A.K and J.A.M.K, are hereby authorized to adopt baby P. 2.J. The child shall henceforth be known as N.J. A. K. D.A.K and M.E.H 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 8th DAY OF APRIL, 2011

L. KIMARU
JUDGE

