



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**ADOPTION CAUSE NO.178 OF 2010**

**IN THE MATTER OF THE CHILDREN ACT, 2001**

**AND**

**IN THE MATTER OF BABY S.M – MINOR**

**T.D.E.....1<sup>ST</sup>**  
**APPLICANT**

**A.H.C.P.....2<sup>ND</sup>**  
**APPLICANT**

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

The applicants, T.D.E and A.H.C.P, are Swedish citizens. They were married in Sweden on 10<sup>th</sup> September 2005. They have not been blessed with biological children of their own due to medical reasons. The 1<sup>st</sup> applicant is a high school teacher while the 2<sup>nd</sup> applicant works as [...]office, Sweden. The applicants wish to adopt a child, specifically a child from Kenya. In order to enable them adopt such child from Kenya, the applicants were assessed by the Social Welfare Committee of Sodermalm District Authority. This is a mandatory requirement under the **Swedish Social Services Act** for a couple wishing to adopt a child, especially a child in an intercountry adoption. The said report is attached to the applicants' application. It is favourable and confirm the applicants as suitable persons to adopt such child. The said Social Welfare Committee issued consent for the applicants to adopt a child from a foreign country. The applicants were further recommended by Adoptions Centrum, Sweden, a foreign adoption society which will be responsible for undertaking post-adoption supervision

of the applicants should the adoption order be granted. The applicants sought the approval of the National Adoption Committee of Kenya to be allowed to adopt a child from Kenya. The committee considered the applicants' application and approved the same in its sitting of 18<sup>th</sup> May 2010. A certificate confirming the said approval was issued on 31<sup>st</sup> August 2010.

Baby S.M (the child) was presumed to have been born on 25<sup>th</sup> December 2008. On 4<sup>th</sup> March 2009, he was abandoned by his biological mother an estate in Nyeri town. He was rescued by a good Samaritan, and taken to Nyeri police station. A report of the abandonment was recorded in the said police station. The child was then referred to Love A Child Home, Nyeri where he was admitted. The Children's Court at Karatina committed the custody of the child to the said Children's Home pending further court proceedings. Effort by the police to trace the whereabouts of the biological parents of the child has been in vain. This court therefore 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 19<sup>th</sup> May 2010 by Little Angels Network 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 17<sup>th</sup> August 2010 for compulsory foster care pending these adoption proceedings.

The court read the reports prepared respectively by Kenya Children's Home, the local adoption society, by the Municipal Social Welfare Committee of Sodermalm District Council, Sweden, by the Director of Children's Services, by Adoptions Centrum, Sweden, the foreign adoption society and by C.W.K, the guardian ad litem. The court had the benefit of reading the report 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 Municipal Social Welfare Committee of Sodermalm, Sweden. 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 of 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 17<sup>th</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 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 applicants' 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, T.D.E and A.H.C.P are hereby authorized to adopt baby S.M. The child shall henceforth be known as S. D.E.P. B.F.M and A.H.S.M 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 8<sup>TH</sup> DAY OF APRIL, 2011**

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