



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**ADOPTION CAUSE NO.4 OF 2011**

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

**AND**

**IN THE MATTER OF BABY J.O *alias* T.H – MINOR**

**P.A.H.....1<sup>ST</sup>  
APPLICANT**

**A.T.....2<sup>ND</sup>  
APPLICANT**

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

The applicants, P.A.H and A.T, are Dutch citizens. They were married in The Netherlands on 2<sup>nd</sup> September 2005. The applicants have not been blessed with biological children of their own due to medical reasons. The 1<sup>st</sup> applicant is employed as a banker while the 2<sup>nd</sup> applicant is an entrepreneur. They both work in The Netherlands. The applicants desire to adopt a child, specifically a child from Kenya. In order to adopt the said child from Kenya, the applicants approached The Netherlands’ Ministry of Justice which has the mandate to deal with inter-country adoptions. The said Ministry instructed the Rotterdam City’s Child Welfare Council to conduct an investigation with a view to establishing the suitability of the applicants to adopt a foreign child. The report prepared by the said council is favourable and recommended to the said Ministry of Justice to grant permission to the applicants to adopt a foreign child. The recommendation was made on 1<sup>st</sup> February 2010. The Dutch Ministry of Justice granted permission to the applicants to adopt one or two children from a foreign country. The applicants were further assessed by Stichting Africa-Netherlands, a foreign adoption society based in The Netherlands. The said adoption society has been duly approved by the Kenya National Adoption Committee to conduct pre - and post-adoption supervision of children adopted from Kenya. The said adoption society recommends the proposed adoption by the applicants. The National Adoption Committee did meet on 21<sup>st</sup> July 2010. It approved the applicants’ application to adopt a child from Kenya. A certificate to grant the said permission was issued on 31<sup>st</sup> August 2010.

Baby J.O alias T.H was found abandoned together with his twin brother baby C (the subject of the Adoption Proceedings in Adoption Cause No.5 of 2011) on 29<sup>th</sup> December 2009. They were abandoned at Rower of Jesus Around the World Church in Kisumu. The said twins are presumed to have been born on 21<sup>st</sup> December 2009. The said children were rescued by good Samaritan. A report was made to Kisumu police station on the following day i.e. 30<sup>th</sup> December 2009. The Children's Department was duly informed. The twins were taken to New Life Home, Kisumu where they remained until 17<sup>th</sup> February 2010 when their custody was committed to the said Children's Home by the Winam Children's Court. Efforts by the police and other relevant authorities to trace the whereabouts of the biological parents of the children have been unsuccessful. This court therefore dispenses with the consent of the biological parents of the twins. The twins were declared free for adoption on 21<sup>st</sup> July 2010 by Little Angels Network adoption society. A certificate for baby J.O alias T.H was issued on the same day and is in the court file. The child was placed under the custody of the applicants on 5<sup>th</sup> October 2010 for compulsory foster care 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 Rotterdam in the Netherlands, by the Director of Children's Services and by P.A.A, 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 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, 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 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 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 5<sup>th</sup> 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 applicant's 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 tPARENTS 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 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 adoption. The applicants, P.A.H and A.T, are hereby authorized to adopt baby J.O alias T.H. The child shall henceforth be known as J. O T.H.H. F.T and L.D.I 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**