



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

ADOPTION CAUSE NO. 33 OF 2011

IN THE MATTER OF BABY F. a.k.a.

T.A.....THE CHILD

A N D

T.C.T.P.....

1ST APPLICANT

W.J.P.V.....2

ND APPLICANT

JUDGMENT

The applicants, T.C.T.P. and W.J.P.V., are Dutch citizens. They were married in The Netherlands on 12th January 2007. The applicants have not been blessed with biological children of their own due to medical reasons. Both applicants are gainfully employed in The Netherlands. The applicants desire to adopt a child, specifically a child from Kenya. In order to qualify to adopt such child, the applicants approached The Netherlands' Ministry of Justice which has the mandate to deal with inter-country adoptions. The said Ministry of Justice instructed the Zwolle city's Child Welfare Council to conduct an investigation with a view to establishing the suitability of the applicants to adopt a child from a foreign country. 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 child from a foreign country. The recommendation was made on 19th December

2008. The Dutch Ministry of Justice granted permission to the applicants to adopt one child from a foreign country. The permission was granted on 24th December 2008. 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 investigation and supervision of persons wishing to adopt children from Kenya. The said adoption society recommends the proposed adoption by the applicants. The National Adoption Committee met on 21st July 2010. It approved the applicants' application to adopt a child from Kenya. A certificate approving the application was issued on 29th September 2010.

Baby F. also known as T.A. (the child) was presumed to have been born on 13th December 2009. He was abandoned soon after birth at Githurai 44. He was rescued by a good Samaritan and taken to Kiambu Police Station. A report of the abandonment was duly recorded in the Occurrence Book at the said police station. The child was thereafter admitted to Kiambu District Hospital. He was discharged and taken to His Image Children's Home, Kiambu for care and protection. The Children's Court at Kiambu committed the custody of the child to the said Children's Home pending further proceedings from this court. Efforts by the police and other relevant authorities to trace the whereabouts of the biological parents of the child have been unsuccessful. This court therefore dispenses with the consent of the biological parents of the child for the purpose of these adoption proceedings. The child was declared free for adoption by Little Angels Network adoption society on 11th August 2010. A certificate to that effect is in the court file. The child was 29th November 2010 placed under the custody of the applicants 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 Zwolle in the Netherlands, by the Director of Children's Services and by MWM, 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 29th November 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 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, T.C.T.P. and W.J.P.V., are hereby authorized to adopt baby F. alias T.A. The child shall henceforth be known as T.J.H.A. R.G. and E.G. 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 20TH DAY OF MAY, 2011

L. KIMARU

JUDGE