



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA

ADOPTION CAUSE NO. 12 OF 2011

IN THE MATTER OF

M.....THE
CHILD

A N D

H.F.F.....
.....1ST APPLICANT

K.M.E.....
.....2ND APPLICANT

J U D G M E N T

The applicants, H.F.F. and K.M.E., are Swedish citizens. They were married in Sweden on 27th May 2006. Both applicants are psychologists. They are employed in organizations in Sweden. The applicants are motivated to adopt 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 be able to adopt a child from Kenya, the applicants were assessed by the Social Welfare Office of the Family Legal and Foster-Homes Divisions of the municipality of Norrkoping in Sweden. This assessment was made under the **Swedish Social Services Act**. This law grants authority to the Social Welfare Committee of the municipality where the applicants are resident to make determination in regard to whether the applicants are qualified to adopt a child, particularly a child from a foreign country. The said report is attached to 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 issued by this court if the applicants fulfill the conditions set under the 1993 Hague Convention on Intercountry Adoption. The applicants were further assessed by Children Above All, a foreign adoption society that has duly been approved by the National Adoption Committee of Kenya to conduct pre- and post-adoption investigation and supervision in Sweden of persons wishing to adopt children from Kenya. The said society recommends the proposed adoption. The applicants sought the approval of the National Adoptions Committee of Kenya to be allowed to adopt a child from Kenya. The said committee sat on 31st August 2010. It approved the applicants' application. A certificate to that effect was issued on 29th September 2010.

Baby M. (the child) was born on 7th of March 2010 at Mbagathi District Hospital. Her biological mother abandoned the child at the said hospital soon after birth. The mother absconded from the hospital. The matter was reported at Kenyatta Police Post on 11th March 2010. The child was discharged from the hospital and admitted to Thomas Barnados Children Home. The Nairobi Children's Court 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 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 fit for adoption on 14th September 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 26th 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 Sabina Mutuku, 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 26th 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 foreign 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 she 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, H.F.F. and K.M.E., are hereby authorized to adopt baby M. The child shall henceforth be known as I.M.E.F.. K.H.F. and P.N.H.B. 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