



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

ADOPTION CAUSE NO.57 OF 2011

**IN THE MATTER OF THE CHILDREN ACT, 2001
AND
IN THE MATTER OF BABY M.J *a.k.a.* MALE CHILD – MINOR**

M.V.D..W.....1ST APPLICANT
M. M.V.D. W.....2ND APPLICANT

J U D G M E N T

1. In the Originating Summons dated 23rd March 2011 the applicants seek orders under Sections 157 and 160 of the Children’s Act, No.8 of 2001 that inter-alia one, C.M be appointed guardian ad Litem and that the Director – Children’s Services do file a report (upon investigation) on the

Applicants’ suitability to adopt the child, M.J, before any adoption order can be made.

2. I note that a guardian ad Litem C.W.K was indeed appointed on 1st April 2011 by Kimaru J and the report by the Director of the Children’s Department in the Ministry of Gender, Children and Social Development was filed on 23rd may 2011. The only issue left for me to address at this point is whether the Applicants should be granted orders to adopt the child, M.J.

3. I have heard the submissions by Mr. Ogotu, advocate for the Applicants and I have had occasion to read the following documents;

(i) An Affidavit sworn on 23rd March 2011 by the Applicants, jointly.

(ii) A joint Statement of Facts dated 23rd March 2011 by the Applicants.

4. The contents of the two documents and the annexures to the supporting Affidavit can be summarized thus;

Firstly, that the Applicants were born on 13th August 1965 and 13th September 1974 respectively and are citizens of The Netherlands.

Secondly, that the Applicants do not have any biological children as the 2nd Applicant is unable to have children due to infertility.

Thirdly, that they are financially able to take care of the child and are physically and morally secure.

5. Apart from the above information, the Applicants have also added that the child was born on or around 31st May 2007 and his parents are unknown as he was abandoned soon after birth. Efforts to trace them have wholly failed.

6. The following bodies have also recommended the adoption;

(i) The Kenya National Adoption Committee by its letter dated 15th September 2010 and Certificate dated 29th September 2010.

(ii) The Stichting Africa (a Foreign Adoption Agency) by its undertaking dated May 2009.

(iii) Council for Child Welfare, at Arnhem by its Report dated 15th March 2010.

(iv) Little Angels Network by its Report dated 24th September 2010 and its Certificate no.[...] issued on the same day.

7. I note also that the applicants have exhibited their medical reports and financial statements as well as details of their professional engagements respectively.

8. With the above background in mind, I am satisfied that on the whole, the Applicants have met the criteria set for International Adoption and I also find that in the present case, the Applicants have specifically met the following conditions;

(i) They have received the requisite approvals from the relevant authorities in Kenya and The Netherlands.

(ii) The child was born on or around 8th June 2007 and is therefore a minor.

(iii) The child's best interest would be served if the Applicants are granted care and custody of him as he was abandoned at St. Paul's Chapel Nairobi and his parentage is unknown. The Applicants have undertaken to give him a quality life upon adoption.

9. In addition, I should only restate the law as regards the issue at hand before granting the orders sought. Section 162 of the Children's Act clothes the court with discretion to make an International Adoption order if it is satisfied that the conditions set out therein have been met and I have said the Applicant herein has done so.

10. In the event, I will order as follows;

(i) M.Van.Der.W and M.m. Van Der W are authorized by this court to adopt M.J and the child shall henceforth be known as M.J Van Der W

(ii) The Registrar General is hereby directed to enter this order in the Adoption Register.

(iii) The guardian ad Litem is hereby discharged of any responsibilities over the child.

(iv) I shall make no order as to costs.

11. Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 20TH DAY OF AUGUST, 2011

I. LENAOLA

JUDGE