



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

ADOPTION CAUSE NO.56 OF 2011

**IN THE MATTER OF THE CHILDREN ACT, 2001
AND
IN THE MATTER OF BABY A. R – MINOR**

**H. G.K.....1ST APPLICANT
B. J.C.K-T.....2ND APPLICANT**

J U D G M E N T

1. The Applicants seek herein orders under Sections 157 and 160(2) and (4), 162, of the Children’s Act, No.8 of 2001 that initially, PA be appointed guardian ad Litem and that the Director – Children’s Department do file a report on the applicant’s fitness to adopt the child, A.R, before any final adoption order can be made.
2. On 1st April 2011 a guardian ad Litem was appointed 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 1st April 2011 and I am now required to determine whether the final order of adoption can be made in these proceedings.
3. In support of the Summons for orders of Adoption are;
 - (i) An Affidavit sworn on 23rd March 2011 by the Applicants, jointly.
 - (ii) A Statement of Facts as set out by the Applicants and dated the same day.
4. A summary of what is contained in those documents is that; the Applicants are nationals of The Netherlands and were born on 19th January 1973 and 29th September 1973 respectively. They got married on 27th October 1995 and reside and work for gain in Vriezenveen, in The Netherlands.
5. Further, that the child was born on or around 27th October 2009 to unknown parents in N, Kisumu District because he was abandoned at birth and no one has been able to trace his biological parents.
6. The applicants’ have one other adopted child, K.F.S.M (originally from South Africa).
7. In support of their case, the Applicants have exhibited the following other documents annexed to their Affidavit;
 - (i) *“Exhibit 11(a) is a copy of a Kenya National Adoption Committee approval Certificate dated 7th October 2010 on their decision on their suitability of as adoptive parents,*
 - (ii) *Exhibit 11(b) is a copy of the Approval Certificate for an Individual Foreign Adoption Applications Serial no.[...],*
 - (iii) *Exhibit 12(a) is a copy of undertaking by Stichting Africa (a foreign adoption agency),*
 - (iv) *Exhibit 13(a) and (b) (i) & (ii) – copy of Legal Guardians’ Letter of Consent dated 2nd June 2010 and their passports,*
 - (v) *Exhibit 14(a), (b) & (c) – Copies of Medical particulars of the Applicants, HIV test results and a letter confirming the applicants’ repeated failure to procreate,*

- (vi) *Exhibit 15 (a) & (b) – Copies of employer Certificates and Financial Statements,*
- (vii) *Exhibit 16 – Certificate of Good Conduct from the Dutch Ministry of Justice,*
- (viii) *Exhibit 17 – Copy of their Undertaking,*
- (ix) *Exhibit 18 – Copies of their Passports,*
- (x) *Exhibit 19 – copies of their Birth Certificates,*
- (xi) *Exhibit 20 – copy of their Marriage Certificate,*
- (xii) *Exhibit 21 – Copies of their full size Photographs,*
- (xiii) *Exhibit 22 – Copy of a Report of the Child Welfare Council Almelo office, the Ministry of Justice of The Netherlands attesting to our fitness as the adoptive parents,*
- (xiv) *Exhibit 23 – Copy Decree issued by Ministry of Justice, The Hague-Netherlands dated 14th May 2009 declaring their suitability for international Adoption,*
- (xv) *Exhibit 24 – Copy of their Health Insurance Statement.”*

8. The Director of Children’s Services in the Ministry of Gender, children and Social Development by a report dated 23rd May 2011 has also recommended that the Applicant “be allowed to adopt baby A.R” and that his proposed names be “A.N.R.K”

9. Little Angels Network by a report dated 15th February 2010 has also declared that the child is free for adoption pursuant to Section 156(1) of the Children’s Act and a Certificate no.[.....] has been issued to that effect.

10. With the above background in mind, I find that in the present case, the Applicants’ have met the following conditions;

- (i) They have received the requisite approvals and consents from the relevant authorities in The Netherlands and Kenya.
- (ii) The child in this case is under the age of eighteen (18) years (he having been born on or around 27th October 2009).
- (iii) The child’s best interests would be served if the Applicants are granted care and custody as he has no known parents who can do so and the applicants have shown that they are capable of doing so to this court’s satisfaction.

11. I should now only restate the law as regards the issue at hand before granting the orders sought. Section 162 as read with Section 158 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 Applicants’ herein have done so.

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

- (i) H.G.K and B.J.C.K -T are authorized by this court to adopt Baby A.R and the child shall be known as A.N.R.K.
- (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.

13. Orders accordingly.

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

**I. LENAOLA
JUDGE**