



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**ADOPTION CAUSE NO.119 OF 2010**

**IN THE MATTER OF THE CHILDREN ACT, 2001**  
**AND**  
**IN THE MATTER OF B.G – MINOR**

**T.A.....1<sup>ST</sup> APPLICANT**

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

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

The applicants, T.A and K.A, are German citizens. They are husband and wife. They were married on 23<sup>rd</sup> May 2003. The 1<sup>st</sup> applicant is a laboratory assistant in the Quality Control Department of a firm known as [name withheld] in Heidenheim in Germany. The 2<sup>nd</sup> applicant is a social education worker with [name withheld] of the Diocese of R – Stuttgart. Since getting married, the applicants have attempted to have biological children of their own but their effort has been in vain. It has been diagnosed that the applicants cannot have children due to medical reasons. They wish to adopt a child, specifically a foreign child. In preparing to adopt a child, the applicants approached the Youth and Family Department of Heidenheim District Administration with a view to securing the requisite authorization to adopt a child. This court has read the report prepared by the said District Administration. It is a detailed report that reaches the conclusion that the applicants are a suitable couple to adopt a foreign child. Eltern Fur Afrika e. V, the foreign adoption society approved by the German government, also assessed the applicants and found them to be suitable persons to adopt a child specifically from Africa. They recommended the applicants to adopt a child from Kenya. The applicants were assessed by the Kenya National Adoption committee. The committee approved the applicants' application to adopt a child from Kenya. This approval is contained in the certificate issued by the said committee that is dated 18<sup>th</sup> May 2010.

Baby B.G, the child that is the subject of these adoption proceedings was born approximately on 26<sup>th</sup> September 2009. He was found abandoned on 4<sup>th</sup> October 2009 soon after birth at G estate in Juja area. A report was made to Thika police station. The child was taken to Thika District Hospital for medical

examination and care. The child was transferred to Thomas Barnado House on 19<sup>th</sup> October 2009 where he was admitted for care and protection pending further investigations. The Children's Court at Thika committed the said child to the care of the said Children's Home pending further court proceedings. Effort by the police to trace the whereabouts of the biological parents of the child has been in vain. This court therefore dispenses with the consent of the biological parents of the child in regard to these adoption proceedings. The child was declared free for adoption by Kenya Children's Home, the local Adoption Society, on 3<sup>rd</sup> May 2010. The child was placed under the custody and care of the applicants on 31<sup>st</sup> May 2010. Since then, the child has been under the custody of the applicants for compulsory foster care pending these adoption proceedings.

This court read the reports prepared by Kenya Children's Home, the local Adoption Society, the Director of Children's Services and by P.O.O, the guardian ad litem. This court has taken into consideration the reports prepared in Germany in regard to the application that the applicants have made seeking to adopt a foreign child, specifically a child from Kenya. All the above reports 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, Germany. 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 German government to adopt a foreign child, and specifically, a child from Kenya. 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 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 31<sup>st</sup> May 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, the guardian ad litem and 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 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 have executed 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 behaviours or other changes in the child; that the adoption society in Germany (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 Germany; that the applicants undertake to allow the representatives of the foreign adoption society in Germany 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, T.A and K.A, are hereby authorized to adopt baby B. G. Henceforth, the child shall be known as B.F.A. C.A and S.A 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 11<sup>TH</sup> DAY OF NOVEMBER, 2010**

**L. KIMARU**  
**JUDGE**