

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO.81 OF 2010

IN THE MATTER OF THE CHILDREN ACT, 2001

AND

IN THE MATTER OF M. A *alias* ABANDONED BABY BOY – MINOR

J. H.....1ST APPLICANT
C. E.....2ND APPLICANT

J U D G M E N T

The applicants, J.H and C.E, are Finnish citizens. They are husband and wife. They were married on 5th August 2005. The 1st applicant works as a freelance location manager in the Finnish movie industry. The 2nd applicant is a communication consultant with a company based in Helsinki, Finland. Since getting married, the applicants have not been blessed with any children. Medical tests have confirmed that the applicants may not have children. The applicants made a decision to adopt a child, specifically a foreign child. With a view to adopting a foreign child, the applicants approached Interpedia, a Finnish adoption society (foreign adoption society) duly registered with the Kenya National Adoption Committee. Interpedia is an adoption society approved by the Finnish Government. The applicants were assessed by the said foreign adoption society and found to be suitable to be adoptive parents. The applicants were further assessed by the social services department of the city of Helsinki and found to be a suitable couple to adopt a foreign child. Upon obtaining the requisite authority to adopt a child from a foreign country, specifically from Kenya, the applicants applied to the Kenya National Adoption Committee to be granted permission to commence proceedings in Kenya to adopt a child from Kenya. The National Adoption Committee issued its certificate approving the application of the applicants to adopt a child in Kenya on 13th January 2010.

Baby M.A was found abandoned by unknown persons in Westlands, Nairobi on 23rd July 2008. At the time of his abandonment, the child was about three (3) months old. A report was made to Muthangari police station. The child was taken to Seeds in His Garden Children’s Home for care and protection. The child was later committed by the Children’s Court to the said Children’s Home for custody pending further court proceedings. On 9th March 2010, the child was placed under mandatory foster care with the applicants prior to adoption after the applicants had signed a foster care agreement. Since then, the child has been in continuous custody of the applicants. The police have been unable to trace the biological parents of the child. This court therefore dispenses with the consent of the biological parents. The Adoption Committee of Little Angels Network met and assessed the child’s case. They determined that the child was free for adoption. A certificate to that effect was issued on 8th October 2009.

This court has read the reports prepared by Little Angels Network, the local adoption society, the director of children services and by Caroline Maina, the guardian ad litem. This court has further considered the reports prepared by Interpedia, the Finnish adoption society and the report prepared by the Social Services Department of the city of Helsinki. All these 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, Finland. This court had the benefit of reading the report prepared by Interpedia, the foreign adoption society approved by the Kenya National Adoption Committee. This court is satisfied that the applicants have been approved by the Finnish government 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 9th March 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 Little Angels Network, 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 Finland (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 Finland; that the applicants undertake to allow the representatives of the foreign adoption society in Finland 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 holds that the applicants have met the criteria set for international adoptions. The applicants, J.H and C.E, are hereby authorized to adopt baby M.A. Henceforth, the child shall be known as A.M. F. E . S.P and L.D.S 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.

DATED AT NAIROBI THIS 5TH DAY OF NOVEMBER, 2010

**L. KIMARU
JUDGE**