



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)**

**Adoption Cause 127 of 2008**

**IN THE MATTER OF ADOPTION OF AM – (MINOR)**

**JUDGMENT**

The Originating Summons dated 3<sup>rd</sup> October, 2008 is presented by two Applicants who are Dutch citizens but have been residents of Kenya since year 2006.

They were married on 24<sup>th</sup> December, 1998 in Georgia and are working for gain with CARE International. The employment's certificate by the Employer annexed to the Originating Summons show that the male Applicant is in its permanent employment and earns annual salary of €64,994/- which is Pensionable. Moreover he is allowed travel allowances of €2,344/- per annum.

CARE International is an organization which takes care of needy children and as part of Social Programme the Applicants are involved with New Life Home and took the child herein to spend Christmas 2007 with them.

Due to Post election violence, the child stayed with them longer and they grew to know him and love him. On inquiry, they found that the child was freed for adoption and thus they started process of adoption and obtained consent of the Little Angels Network, an Adoption Society registered under the Children Act.

Their two adult children, S and W aged 22 and 19 years have given their consent to the adoption and have further agreed to share their respective part of inheritance with the child.

The Embassy of the Netherlands (Head of Consular Affairs), Nairobi has confirmed that the child on adoption order shall have the right to apply for a visa and residence permit to enter and live in the Netherlands and will be conferred the same rights as those of Dutch citizens who are born in the Netherlands.

From the details of the records before the Court the Applicants have fulfilled all the requirements as per Section 156 of the Children Act. However, as the Applicants are foreign nationals and shall eventually leave Kenya and go to their home country, I asked for further clarifications whether the absence of the Applicants undergoing the Adoption process in the Netherlands shall create any hurdle in the child's right to acquire residence in the Netherlands.

By a further affidavit sworn on 25<sup>th</sup> June, 2009 and 2<sup>nd</sup> July, 2009, the Applicants produced relevant Laws. Article 14 of the Law concerning Foreign children for Adoption, stipulates that the adoptive parents do not have to adhere to above mentioned policies, if the foreign child has been cared for and educated, by candidate/aspitant for apparent adoption in a period in which they have their ordinary

residence abroad by them at least for a year and if the care and education of that child after entry in the Netherlands by them will be continued.

Moreover, I have a letter from Ministry of Justice dated 29<sup>th</sup> June, 2009 which also confirms that as the Applicants are resident of Kenya, the application of Dutch law will not apply to them and further that as the Netherlands is party to Hague Convention and Child Right Convention, it considers the rules and principles which are laid there and the Basic Principle for Inter-country Adoption is that **at all times the best interest of the child have to be served.**

I may reiterate that the above principle is the paramount factor to be considered under the Children Act and Kenya is a signatory to the Hague Convention on Inter-country Adoption.

The Applicants thus, in my opinion, and I do hereby find so, are not required to follow the process laid down by Dutch Laws and have rightly followed the process under the Children Act and I am further convinced that by doing so, the right of the child shall not be impaired as confirmed by the Dutch Officials – Ministry of Justice and Dutch Embassy in Kenya.

As against that the child was born on 28<sup>th</sup> May, 2006 vide birth certificate No.308096 (obtained by the Home). The child was abandoned when he was one day old along Mawani area, Mombasa. This fact is confirmed by a letter dated 28<sup>th</sup> June, 2006 from Nyali Police Station. The incident was recorded in O.B No.25/28/5/2006 of the aforesaid Police Station. A letter dated 18<sup>th</sup> July, 2006 confirms that the baby was abandoned on 27<sup>th</sup> May, 2006 at around 9.30 p.m. and was taken to Coast Provincial General Hospital from there. On 4<sup>th</sup> August, 2006 he was taken to New Life Home, Mombasa. The child thereafter was committed to New Life Home Trust by the Children Magistrate, Mombasa on 24<sup>th</sup> August, 2006 vide P&C No.741/06. Then was transferred to New Life Trust for further medical treatment.

Nyali Police Station by its letter dated 10<sup>th</sup> January, 2007 confirmed that nobody has come to claim the child. Thereafter the child was placed under formal foster Care Agreement on 11<sup>th</sup> July, 2006. The child has been diagnosed as HIV positive and still is positive.

His health has steadily been contained by the use of ARVs with regular 3 months check up.

The child was freed for Adoption by Little Angels Network vide its certificate No.[.....] and dated 16<sup>th</sup> July, 2008.

The Applicants have become very fond of the child and both of them want to be parents of a needy child who needs continuous health care.

The report from the Director of Children Services dated 17<sup>th</sup> March, 2009 states that the Applicants are suitable and capable in all respect to take care and give love to the child. The child, according to the report, stands to gain in all respect if the order of adoption is granted.

Similar is the view of the Adoption Society, Little Angels Network vide its report dated 22<sup>nd</sup> October, 2008 expressed the same opinion.

Guardian ad litem in her two reports have depicted lovely pictures of happiness of the child and care and love given to him by the Applicants. She says

“Both H and P seem to keep up with A’s energy and stamina. I have seen P rolling around with A on the ground when they are playing. They love to play ball games together. H is equally quick to ensure that A does not harm himself or anybody else while running around”.

I have also seen A during several appearances before the court. I found him a secure and confident child. He seemed to be a happy child with love and warmth.

In view of the premises observed aforesaid, I am satisfied that the Applicants are suitable persons to adopt the child, that the child has not been claimed by anyone having been abandoned on birth and that it shall be in the best interest of the child if the adoption order is granted.

I thus authorize the Applicants to adopt the child to be known as Andy Mwamba Thiery Daniels and his birth date shall be recorded as 28<sup>th</sup> May, 2006.

I discharge the guardian ad litem.

Above orders be recorded in the Adoption register held by the Registrar General.

Dated, Signed and Delivered at Nairobi, this 31<sup>st</sup> July, 2009.

K.H. RAWAL

JUDGE

31.7.09