



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

**Adoption Cause 166 of 2005**

**IN THE MATTER OF THE CHILDREN ACT, 2001**

**AND**

**IN THE MATTER OF HR (A CHILD)**

**JUDGMENT**

On 28<sup>th</sup> October, 2005, MJS and RMS of Post Office Box *[particulars withheld]*, Nairobi, Kenya filed originating summons and applied, *inter alia*, to be authorized to adopt HR, to be renamed ERS. The application is accompanied by a statement in support thereof plus an affidavit by the 1<sup>st</sup> applicant, MJS sworn on his own behalf and on behalf of the 2<sup>nd</sup> applicant, RMS on 25<sup>th</sup> October, 2005 verifying the supporting statement to be true. The application is stated to be brought under sections 154, 156, 157, 158 and 159 of the Children Act, No.8 of 2001 and is supported by various affidavits and other documents whose purport may be summarized as per ensuing paragraphs.

The applicants are of American nationality and European race. They are husband and wife, respectively, having got married on 30<sup>th</sup> December, 1978 at EC, S of I, United States of America. They have 3 children: KNS (male) aged 25 years, DKS(male) aged 22 years and KRS(female) aged 20 years at the time of filing the application now under consideration.

The 1<sup>st</sup> applicant, MJS is around 57 years while the 2<sup>nd</sup> applicant, RMS is aged around 55 years. The child to be adopted, a Kenyan girl of the African race, was born on 15<sup>th</sup> April, 2005 and is now aged about 1 year and 2 months. Section 158 (1) (a) of the Children Act, 2001 is to the effect that for the applicants to qualify as adoptive parents, they or at least one of them should have attained the age of 25 years and be at least 21 years older than the child but should not have attained the age of 65 years. The statutory age requirements have been met in this case.

The applicants profess the Christian religion and have been resident in Kenya since August, 2003 on entry permits. The 1<sup>st</sup> applicant is employed as an accountant by the Mennonite Board in Eastern African here in Kenya while the 2<sup>nd</sup> applicant is employed as a teacher by Rosslyn Academy also in Kenya. They have reported that the child to be adopted was placed in their care on 7<sup>th</sup> July, 2005 by the Nest Children Children's Home and that they have had care and custody of the child ever since. They also averred that they have the financial means and capability to take care of the subject child together with their biological children. In the latter regard, the applicants have stated vide paragraph 20 of the form of Enquiry on Prospective Adopter (Exhibit MJs 18) that their joint income is US \$ 356 per month (equivalent to approximately Kshs.25,988 at exchange rate of Kshs.73/= per US \$) plus full coverage for food, household, medical and travel expenses. They have also reported to own a single family residence at N valued at US \$ 67,500 (equivalent to approximately Kshs.4,927,500/=); a two storey residence at Goshen valued at US \$73,900 (equivalent to approximately Kshs.5,394,700/=); and a duplex residence at G valued at US \$ 68,650 (equivalent to approximately Kshs.5,011,450/=).

A report dated 17<sup>th</sup> May, 2006 by the Director, Children's Services, Kenya records, *inter alia*, as follows:

'The couple did not initially intend to adopt the child in this matter but had only offered to offer

specialized nursing care that the child needed having been born prematurely was subsequently sickly feeble and abandoned. The applicants come across as devout Christians and their life seems to positively oscillate around their faith.’

The Director, Children’s Services recommends the adoption.

The child to be adopted was born to one BW on 15<sup>th</sup> April, 2005 at Kiambu District Hospital, Kenya. The mother absconded from the hospital next day and abandoned the child there. The child has not been claimed by anybody to date. Eventually the child was by court order committed to Nest Children’s Home for 6 months and subsequently placed in the care and custody of the applicants on 7<sup>th</sup> July, 2005 and the applicants have exercised foster care over the child since then as already noted. Nest Children’s Home has no objection to the proposed adoption of the child by the applicants. Little Angels Network, a registered adoption society in Kenya, has declared the child free for adoption under section 159 (1) (a) (i) of the Children Act. The applicants have indicated they felt compassion of the child and would like to offer the child a home, parental love and care. The biological mother should feel ashamed of herself. Consent of the child’s biological parents is hereby dispensed with.

A report of April, 2006 by the guardian *ad litem*, Mrs Thakane Obonyo recommends the proposed adoption. Apparently the applicants told the guardian *ad litem* and she recorded that M’s married sister, A together with her husband, MH consented to be legal guardians to the child should the need arise. I have not, however, found any written undertaking from them. Happily, there is a written consent (Exhibit MJS 10) by all the applicants’ children, KNS, DKS and KRS of ‘our willingness to care for this child should our parents at some future time be unable to do so.’ That is a clear undertaking to be the child’s legal guardians. This court clarifies and emphasizes that the undertaking involves taking care of all the needs of the child to be adopted in case the applicants die or otherwise become incapacitated before the subject child attains majority age and is able to fend for herself. The applicants are reported in the Children’s Department report that they are aware that if authorized to adopt the child, she will have inheritance rights like their biological children. I understand they will accord the child such rights.

There is in the court file a birth certificate issued on 26<sup>th</sup> August, 2005 in respect of HR. An affidavit by Esther Keli sworn on 13<sup>th</sup> March, 2006 deposes that she, Esther Keli is a Social Worker with Nest Children’s Home and that the baby/child in this case, HR was while at Kiambu District Hospital named after her runaway mother, BW. Esther Keli confirms that the two names, BW and HR refer to one and the same person. I accept Esther Keli’s deposition and find as a fact that the two names, BW and HR refer to one and the same child who is the subject matter of these adoption proceedings.

Alice Akinyi Omondi, Social Worker with Little Angels Network society conducted a home study of the applicants and forwarded her report thereon to [PARTICULARS WITHHELD] Bethany Christian Services is a licensed international adoption agency in Grand Rapids, Michigan. That agency reviewed Alice’s report and approved or validated it on 30<sup>th</sup> March, 2006.

I am satisfied on evidence placed before me that the applicants are fit and proper persons to adopt the child in question; that it is in the child’s best interests to be adopted by the applicants, who meet the requirements of Part XII of the Children Act, 2001 relating to adoptions. Applicants’ counsel submitted that the proposed adoption herein is not an international adoption. I am of the respectful view that it straddles the boundaries of a local adoption and an international adoption and I treat it as the latter. Accordingly, I hereby make an international adoption order under sections 154 and 162 of the Children Act, 2001 authorising the applicants, MJS AND RMS to adopt the child, HR who shall henceforth be known as ERS. The Registrar – General of the Republic of Kenya is directed to make appropriate entries in the Adopted Children Register in compliance with section 169 of the Act.

Orders accordingly.

**Delivered at Nairobi this 19<sup>th</sup> day of June, 2006.**

**B.P. KUBO**

JUDGE