



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

**Adoption Cause 46 of 2006**

**IN THE MATTER OF ADOPTION OF EC (INFANT)**

**JUDGMENT**

The Applicants before me are German Nationals and currently the 1<sup>st</sup> Applicant is an employee of Ministry of Foreign Affairs, working as a Regional Medical Officer attached to the German Embassy at Nairobi.

He is in charge of over ten countries in Africa. His employment is of permanent status.

They are born on 3<sup>rd</sup> February, 1950 and 3<sup>rd</sup> May, 1961 respectively and were married on 7<sup>th</sup> April, 1995 as per marriage certificate attached to their statements. Their marriage is monogamous one.

They have two biological sons born on 26<sup>th</sup> April, 1993 and 12<sup>th</sup> March, 1997. Before their marriage, they had to wait till the 1<sup>st</sup> Applicant could divorce his first wife. That is the explanation of the birth date of their first born.

The 2<sup>nd</sup> Applicant is a house-wife looking after the welfare and needs of the family.

Their respective backgrounds have been amply detailed in the reports from the Adoption Society (Kenya Christian Home) and from the Director of Children Services. I find nothing to comment against their respective family, upbringings and characters.

I am also satisfied that the Applicants are physically, mentally and financially fit and have no criminal records.

The minor was an abandoned child and was admitted to Kenyatta National Hospital on 4<sup>th</sup> November, 2005. After that she was discharged to the Nest Children's Home where she was committed by committal order dated 8<sup>th</sup> March, 2006 from the Senior Resident Magistrate, Children Court, Nairobi.

The minor has been in constant care and custody of the Applicants since 15<sup>th</sup> December, 2005 when she was five weeks old. While taking care of the minor, they developed a liking for her and decided to adopt her. Hence the application.

It may be appropriate to note that the applicants also have a foster child called SO and they have applied to be her legal guardians before the Children Court Nairobi.

The biological sons have no problem with this adoption and loves the minor as their own sister.

Nest Children's Home has consented to the adoption of the minor. She is also certified to be free to be adopted by the certificate dated 24<sup>th</sup> May, 2006 issued by Kenya Christian Homes, an adoption society

licensed under the provisions of the Act.

The Applicants have thus satisfied the legal requirements for adoption in ordinary adoption causes. However, the present cause is an International Adoption as both the Applicants are German Nationals and eventually will return to their home country. Thus the court has to satisfy itself, whether the present cause is fit to be granted and whether the Applicants have satisfied all the legal requirements of the International Adoption.

The record of the proceedings shall bear me out that this court has been very keen on those requirements to be fulfilled. Section 162 of the Children Act, 2001 provides for such requirements.

My main concerns were the recognition of the adoption order by the Federal Republic of Germany and whether the Applicants have been authorized and recommended as suitable persons to adopt a foreign child.

Those requirements were not appropriately met in the Originating Summons but were thereafter met as per the further affidavit of the Applicants sworn on 20<sup>th</sup> July, 2006 and its annexure.

The first document was the certificate of Adoption qualification from the Germany Embassy. As regards the recognition of the adoption by German authority, I have a letter dated 17<sup>th</sup> July, 2006 from the German Embassy in Nairobi which has enclosed relevant parts of German Civil Code as regards “**Adoption of a Child**”. I have carefully read those legal provisions and do find that the requirements under the code are very similar to those of the Act and the Applicants herein have satisfied them. I say so because the order of adoption from this court shall only be recognized if the legal provisions applicable in Germany as regards adoption are also satisfied in the proceedings before this court.

I also note with interest the provisions of Section 1754 of the Civil Code which stipulates:

**“Section 1754 Effect of Adoption**

**1.If a child is adopted by a married couple or if a spouse adopts a child of the other spouse, that child then acquires the legal status of a joint child of the spouses”.**

I read this provision with great sigh of relief.

The Applicants are highly recommended by German Embassy at Nairobi to be suitable to adopt a foreign child physically, emotionally and financially.

With the above premises, I am also satisfied that the Applicants have fulfilled the requirements of Section 162 of the Act.

The reports both from Department of Children Services as well as from the Adoption Society recommend the adoption by stating that the same shall be in best interest of the minor. I have considered both reports very carefully.

The report from the guardian ad litem is no different. As neighbours they have frequent occasions to observe growth and care of the minor.

From my own considerations of the facts of this case and observations made hereinbefore, I do not have any adverse comments to make as to the suitability of the Applicants to adopt the minor and Welfare of the minor.

I am further gratified to note that the education in Germany is free upto university level and the German Embassy has given undertaking to provide a German Passport to the minor if the Adoption Order is granted.

Furthermore I also note that the Nest a child e.v. has undertaken to provide annual report on the development of the child.

The upshot of all the above is that I allow the Applicants to adopt the minor EC to be known henceforth as JBCRL whose birth date shall be registered as 4<sup>th</sup> November, 2005.

I further direct the Registrar to record this Adoption Order in his relevant register.

I also order that WB and UNB be appointed as minor's legal guardians, as per their consent dated 6<sup>th</sup>, January, 2006 (Annexure LW9 of the application).

I further direct that the minor be nominated as a beneficiary to the Life Insurance Policy of the 1<sup>st</sup> Applicant and that the Applicants to undertake to accept the minor as their legal heir.

The orders accordingly.

Dated and signed at Nairobi this 18<sup>th</sup> day of September, 2006.

**K.H. RAWAL,**

**JUDGE**

**18.9.2006**