



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

Adoption Cause 126 of 2006

IN THE MATTER OF THE CHILDREN ACT, 2001

AND

IN THE MATTER OF BABY E (A CHILD)

JUDGEMENT

On 28.08.06 KT and BT of care address *[particulars withheld]*, Germany filed originating summons of the same date praying, *inter alia*, for the following substantive order, namely:-

THAT the applicants be authorized to adopt BABY E, to be known as LET.

The originating summons application is stated to be brought under sections 154, 156 (1), 157 (1), 158 (1) (a), (4) (a), 159 (4), (6), (7), 8 (a), 160 (1), (2), (4), 162, 163, 164 (1) and 170 of the Children Act, No.8 of 2001, regulations 24, 26 of the Children (Adoption) Regulations, 2005 'of the Interpretation and General Provisions Act, Cap.2 Law of Kenya

At the hearing of the application on 10th November, 2006 the applicants were represented by learned counsel, Mrs N. Musyimi.

The applicants are German nationals. KT the 1st applicant was born on 24th May, 1975 and is now aged around 31 years. Britta Thaldolf the 2nd applicant was born on 14th September, 1974 and is now aged about 32 years. The child to be adopted was born on 25th November, 2005 and is now aged 1 year. Section 158 (1) (a) of the Children Act 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.

The applicants are husband and wife, respectively, having got married on 3rd December, 1999. Their marriage is now around 6 years. Regulation 19 (d) of the Children (Adoption) Regulations, 2005 requires a prospective adoptive couple to have been married for at least 3 years prior to the date of commencement of adoption arrangements. The 3 - year marriage requirement has also been met.

The 1st applicant works as Construction and Site Manager with a company known as Tute Bau in Germany while the 2nd applicant works as a part-time operating theatre Nurse for 20 hours a week. The applicants' combined income is given as Euros 3,900 per month. Applicants' counsel gave from the Bar

an exchange rate of Kshs.86/= to the Euro. This works out at approximately Kshs.335,400/= per month. The applicants have also given affidavit evidence that they own 3 properties, two of which they rent out and they fetch rental of Euros 650 monthly, which is about Kshs.55,900/= per month. They use the third property themselves. The applicants report carrying German health insurance plus accident insurance and disability insurance. The above evidence establishes that the applicants are people of means and can comfortably take care of the child to be adopted.

The applicants have also appointed Ina Thaldorf to be the child's legal guardian in the event of their death. There is an undertaking filed by Ina Thaldorf showing that the said Ina Thaldorf has undertaken to act as legal guardian of the child in the event of the applicants' death. The court clarifies and emphasizes that the proposed legal guardian's responsibility does not only cover the event of the applicants' death but must also extend to the applicants' other incapacity before the child attains majority age.

The applicants have confirmed that the German Government will accept the child and grant the said child residence. They add that the Starnberg District Office in Germany has issued an advance approval for issuance of visa and entry into the Federal Territory. The certificate (TKT – 6) is to the effect that the German authorities have no reservations against the entry and residence of an adopted Kenyan child taken to Germany by the applicants provided their adoption of the child is in compliance with Kenyan law. I note, however, that the certificate has an expiry date of 5th October, 2006 but I take it that the applicants will have no difficulty in getting it renewed or extended.

As regards the child to be adopted, Administration Police Corporal Joshua Muhia of Karinde Administration Police Post, Nairobi recorded a statement dated 16th February, 2006 to the effect that on 25th November, 2005 somebody reported to the Police Post that a child had been heard crying in a pit latrine within the area of jurisdiction of Administration Police Post. He plus two other Administration Police officers accompanied members of the public to the scene and rescued the child from the pit latrine. That child, a boy, is BABY E who was eventually committed to the care and custody of Nest Children's Home by the Senior Resident Magistrate's Children's Court at Nairobi on 8th March, 2006.

Subsequently the child was placed with the applicants for purposes of adoption on 29th May, 2006 and he has been under their custody, care and control ever since. Little Angels Network, a registered adoption society in Kenya, has declared the child free for adoption as required by law. The child's *guardian ad litem*, Margaret Muthoni Murimi has filed her report to the effect that the 1st applicant has not spent quality time with the child for the reason that he comes to Kenya for a few days to touch base with the child and goes back to Germany to pursue his career. The 2nd applicant has, however, stayed with the child here in Kenya for purposes of the adoption sought since 29th May, 2006. The applicants have an adopted child already, also a boy (Jerry Lamour Thaldorf), adopted from Haiti in the Carribean who was born on 22nd April, 2002 now aged about 4 years. Jerry and BABY E are reported to get on well. Bonding between BABY E and the applicants, especially the 2nd applicant, is reported to have taken place. The *guardian ad litem* has recommended the proposed adoption. Kenya's Director of Children's Services shares the concern that the 1st applicant has not spent quality time with the child but the said Director has all the same recommended the proposed adoption.

The subject child was abandoned at birth – in fact thrown into a pit latrine – and has not been claimed by anybody. His biological parents are unknown. I dispense with the child's biological parents' consent to the proposed adoption as I am authorized by law so to do.

I am satisfied on evidence tendered before court that the applicants meet requisite requirements for adoptive parents; that they are fit and proper persons to adopt the subject child; and that it is in the child's best interests to be adopted by the applicants. Accordingly, I hereby make an international adoption order under sections 154 and 162 of the Children Act, 2001 and authorize the applicants, KT and BT to adopt BABY E who shall henceforth be known as LET. The Registrar – General, Kenya is directed to make appropriate entries in the Adopted Children Register as required by law.

Orders accordingly.

Delivered at Nairobi this 24th day of November, 2006.

B.P. KUBO

JUDGE