



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**ADOPTION CAUSE NO.193 OF 2004**

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

**AND**

**IN THE MATTER OF BABY EJ (A CHILD)**

**JUDGMENT**

By A.N. and M.P.V. of care of via Napoli 70 – 33, Genoa, Italy, applied pursuant to the various sections of the Children Act, 2001 cited therein, for the following orders:-

1. That C.N. of P.O. Box 21255 – 00505, Nairobi in the Republic of Kenya be appointed guardian ad litem in respect of the child in this case.
2. That the Director, Children’s Services Department in the Office of the Vice- President and Ministry of Home Affairs investigates the applicants’ fitness to adopt the said child and file a report.
3. That the applicants be authorized to adopt the child E.J., to be known as E.J.N.
4. That the court be pleased to make any further orders as it deems fit and necessary.

The originating summons was accompanied by an undated statement made by both applicants and an affidavit sworn on 01.10.04 by the 1st applicant, A.N. alone in support of the summons. It would have been better if the supporting affidavit was also sworn by both applicants.

The applicants were represented by learned counsel, Miss Gitau.

On 29.10.04 C.N., Managing Director of News from Africa in Nairobi was appointed guardian ad litem to the child and he subsequently filed his report on 19/11/04. On the same date the Director, Children’s Services was ordered to investigate the fitness of the applicants or otherwise to adopt the child and the Director filed her report on 18.11.04. The law requires the child and the applicants to be evaluated and assessed by a registered adoption society in Kenya. The Child Welfare Society of Kenya, a registered adoption society, filed an evaluation and assessment report on the child and the applicants on 29.10.04.

The following emerges from the reports of the Child Welfare Society and the Director, Children’s Services and other documents in the file. Baby E.J., an African boy, was retrieved from a pit latrine in **[particulars withheld]** Village, Kiambu District on 08.10.03. He appeared to have been newly born. The matter was reported to Karuri Police Station and the police escorted the boy child to Kiambu District Hospital where he was admitted for about 6 months. On 08.04.04 the Senior Resident Magistrate at Kiambu did vide Kiambu Senior Principal Magistrate’s Court Protection and Care Case No.19 of 2004 order the child to be committed to Abandoned Baby Centre, Nairobi “for care and protection until he attains the age of 18 years.” The Abandoned Baby Centre thus became the legal custodians of the child.

On 29.06.04 the Centre opted to place the child under the foster care of the applicants herein for adoption purposes and the child has been in the applicants' custody and care since. The child's biological parents are unknown and neither them nor any other relative has claimed the child since his abandonment on 08.10.03, which is over one year ago. On 14.07.04 the Abandoned Baby Centre, Nairobi being the child's legal guardians gave written consent for the child to be adopted by the applicants.

The applicants are Italian nationals. Both were born in Genoa, Italy. They are husband and wife, respectively. The 1st applicant, A.N. is aged 38 years and the 2nd applicant, M.P.V. is aged 35 years. The 1st applicant is a Computer Technician and works with Agip Company in Piazza Della Victoria, Genoa while the 2nd applicant is a freelance physiotherapist in Genoa. The applicants got married at Genoa, Italy on 29.06.96. They have not been able to get a biological child of their own for medical reasons, hence their recourse to adoption. The applicants told Mrs J.N. Ndungu, Assistant Director, Children's Services, Kenya during her social inquiry about them that in choosing the kind of child to adopt, they were guided by desire to assist a child who needs parents. They did some research and concluded as follows:

***“They felt, based on their research, that the need for this was greatest here in Kenya. They observe that it is difficult to adopt in their mother country as many children remain fostered and the process for adoption lengthy.”***

A social report dated 19.10.01 by Paola Gallo, Social Worker in Genoa said of the applicants that they lived in a sunny, cosy flat they owned which consisted of three rooms, bathroom and kitchen. When questioned by the Assistant Director, Children's Services in Kenya in November, 2004, they said their combined income is sufficient to raise the child they seek to adopt on and that they have savings. They did not, however, indicate the level of their income. However, at the request of this court they furnished the following income figures, namely, that their combined income is 52046 Euros per year, which translates to about Kshs.5,516,876 per year. They also confirmed that they own the flat alluded to in the 2001 social report by Social Worker Paola Gallo of Genoa. This is reasonable income. The applicants also told Kenya's Assistant Director of Children's Services that primary and secondary education is free and compulsory in Italy. They acknowledged that university education is very expensive in Italy but they would endeavour to make it available to the child if he qualified and support him in his chosen field.

The Juvenile Court in Genoa did on 09.03.01 declare the applicants eligible for adoption of a minor of foreign nationality who should be born prior to 2014. I sought to know from the applicants if the Genoa Juvenile Court's declaration of their eligibility to adopt a foreign child is still valid and they confirmed on oath that it is, through the 2nd applicant. The applicants said at paragraph 21 of their joint statement in support of their adoption application that P.N., sister of the 1st applicant and G.G., brother-in-law of the 1st applicant have consented to be the legal guardians of the child in the event of the applicants dying or becoming otherwise incapacitated before the child reaches full (majority) age. There is a copy of their bond of surety to that effect in the file. The said guardians have in turn stated that according to the Italian legal system, the adoption of a foreign child is legitimate and therefore adoptive affiliation is equivalent to natural adoption. I understand this to mean that an adopted child enjoys equal rights with a natural child in Italy.

The Child Welfare Society of Kenya has declared the child in question free for adoption because he is in need of special care and protection and that it is in the child's interests to grow up in a family and enjoy parental love. Kenya's Director of Children's Services has reported that the child has bonded well with the applicants; that the applicants meet the social criteria and possess the requisite abilities and capabilities of providing a home to the child; and that this court should consider the applicant's adoption application favourably.

The applicants profess the Christian religion and it is their wish to bring up the child in the same faith. They have deponed that they have not received or agreed to receive and no person has made or given or agreed to make or give them any payment or reward in consideration of the adoption sought.

Kenya law requires that for the applicants to qualify as adoptive parents, 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. These age requirements have been met in the present case.

I am satisfied on the evidence placed before me that the applicants' are fit and proper persons to adopt the subject child and that they meet the requisite legal requirements and social criteria for adoptive parents. I believe they mean well for the child; that they will give him the best within their means; 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 authorising the applicants, A.N. and M.R.C. jointly to adopt the child, EJ who shall henceforth be known as E.J.N. The Registrar – General of the Republic of Kenya is hereby directed to make appropriate entries in the Adopted Children Registrar in compliance with section 169 of the Act.

Orders accordingly.

**Delivered at Nairobi, Kenya this 29th day of November, 2004.**

**B.P. KUBO**

**JUDGE**