



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**ADOPTION CAUSE NO.196 OF 2004**  
**IN THE MATTER OF THE CHILDREN ACT, 2001**  
**AND**  
**IN THE MATTER OF BABY W B (A CHILD)**

**JUDGMENT**

The originating summons which initiated these adoption proceedings does not bear any court stamp indicating when it was filed. There is in the file, however, a copy official receipt K 976976 dated 08.10.04 issued to the firm of Musyimi & Co. Advocates. I take it that the originating summons was filed on 08.10.04. By the said summons the applicants, M.T (1st applicant) and D.S (2nd applicant) of care of via Fratelli Bandiera 3/18 16035 Rapallo, Italy sought various orders pursuant to the various sections of the Children Act , 2001 cited therein. The orders sought are:-

1. That Christopher Wataka 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 child and file a report.
3. That the applicants be authorized to adopt W B, to be known as W B T.
4. That the court be pleased to make any further order as it deems fit and necessary.

The applicants were represented at the hearing of their adoption application on 29.10.04 by Miss Gitau.

On the same date, i.e. 29.10.04, Mr. C.W was appointed guardian ad litem and the Director, Children’s Services Department was directed to investigate the fitness or otherwise of the applicants and file a report. On 11.11.04 the Director, Children’s Services filed a report on the applicants while the guardian ad litem filed his report on the applicants on 12.11.04. Section 157 (1) of the Children Act, 2001 (“the Act”) including its proviso requires, inter alia, that the child and the applicants must be evaluated and assessed by a registered adoption society in Kenya. Such a report was filed by the child Welfare Society of Kenya, a registered adoption society, on 29.10.94 when this cause came up for hearing before me.

The report filed by the Child Welfare Society of Kenya shows that the child was born to L.W on 27.11.03 at Pumwani Maternity Hospital, Nairobi, abandoned there and has not been claimed by the biological mother or by any other relative or person. The society has, therefore, declared the child free for adoption in accordance with the law. I pause here to observe that the Society’s Certificate of Freeing a Child for Adoption does not indicate the sex or gender of the child. I had, therefore, to grope through

other documents to ascertain this simple fact. The Society may wish to address this issue. A photocopy of Pumwani Maternity Hospital Ante-Natal Clinic Card, however, shows that the baby born to the aforesaid L.W is male.

The child was subsequently placed at the Abandoned Bay Center, Nairobi and the Center in turn handed the child over to the applicants on 26.06.04 for foster care. The boy child, a Kenyan national of the African race, has been in the custody and care of the applicants since 26.06.04. The Abandoned Bay Center has consented to the proposed adoption of the child by the applicants.

The applicants are Italian nationals. They are husband and wife, respectively, and have been married for 6 years (since 06.09.98). This is the first marriage for both of them. They have not been able to get a child of their own naturally, hence their recourse to adoption.

A report by Dr. Candida Villapiana, Social Worker with the Social Workers' Association of No.55, Regione Toscana (Italy) dated 14.10.03 said of the applicants' motivation for their choice of an African child, inter alia, as follows:

***“Their preference for Africa comes from the idea that children there are particularly needy and that, despite economic difficulties, often due also to the responsibilities of the West, the African people show great pride and big values to hand down. They have an open mentality, free from any racial prejudice ....”***

The 1st applicant, M.T aged 43 years, holds the position of Vice- Superintendent of Police in his town of Rapallo, Italy, which is said to be equivalent to that of a Kenyan Police Sergeant. He told the Assistant Director of Children's Services of Kenya's Children's Department that he does not think there is much crime against children in his part of the country i.e. Rapallo Italy, neither is there child trafficking. The 2nd applicant, S.D, aged 38 years, is a baby sitter by occupation. Both applicants look forward to the successful conclusion of the present adoption process. According to the report of the guardian ad litem, the applicants' combined income is slightly over Euros 2,000 per month, which translates to about Kshs.212,000/= per month. This is reasonable income. The same report indicates that there are around 30,000 inhabitants where the applicants live and a good number of them are immigrants. The town where the applicants live is reported to be peaceful and cosmopolitan and has many tourists owing to its proximity to the sea. The report further states that in the class of a nephew to the applicants in the same town, there are children from Bulgaria, Colombia, Ecuador, Morocco and even Kenya.

The Juvenile Court in Genoa, Italy is reported to have declared the applicants on 11.06.02 eligible for adoption of a minor of foreign nationality who must have been born prior to 2011. As the child in the present cause was born on 27.11.03, the child's age required by the Italian Juvenile Court has been met. Here in Kenya, section 158 (1) (a) of the Children Act, 2001 requires that for the applicants to qualify as adoptive parents, at least one of them should have attained the age of 65 years. As recorded earlier, the child was born on 27.11.03, which puts his age at 1 year now. The 1st applicant is aged 43 years while the 2nd applicant is aged 38 years. The Kenyan age requirements have, therefore, also been met.

The applicants have deponed that the 2nd applicant's sister, C.S and her husband A.O have consented to be the subject child's legal guardians in the event of the applicants dying or becoming otherwise incapacitated before the child attains full (majority) age. The said guardians have stated that according to the Italian legal system, the adoption of a foreign child is legitimate and is “equivalent to a natural adoption”, which I understand to give the adopted child all rights a natural child of the applicants would be entitled to in Italy, including the right to wholesome upbringing, health care, education and inheritance. The three major reports, i.e. by Kenya's the Children's Services Department, by Child Welfare Society of Kenya and by the Guardian *ad litem* recommend the proposed adoption. The child is

reported to have bonded well with the applicants, who have stated that they have not been influenced by any improper motive in seeking the adoption.

I am satisfied on the evidence placed before me that the applicants meet the requisite legal and social requirements for prospective adoptive parents and 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 authorising the applicants, M.T and D.S jointly to adopt the child, W B who shall henceforth be known as W B T. The Registrar General of the Republic of Kenya is hereby directed to make appropriate entries in the Adopted Children Register in compliance with section 169 of the Act.

Orders accordingly

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

**B.P. KUBO**

**JUDGE**

29/11/04

Coram:Kubo, J

Miss W.W. Gitau for Applicant

Kugwa court clerk