



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**ADOPTION CAUSE NO. 1 OF 2015**

**IN THE MATTER OF THE CHILDREN ACT NO. 8 OF 2001**

**AND**

**IN THE MATTER OF CHILD R.K.**

**AND**

**IN THE MATTER OF AN APPLICATION FOR ADOPTION BY E R AND C M R**

**JUDGMENT**

1. The applicants E R and C M R are a married couple who are German Citizens. They filed his originating summons dated 9<sup>th</sup> January 2015 seeking to be allowed to adopt baby R.K. for reasons that they had not been successful in getting a biological child of their own.
2. Child R.K. was reported to have been abandoned at Amaica Restaurant along Ralph Bunch Road on 12<sup>th</sup> March 2012, by his Swedish mother who left him with the house help. The matter was reported at Kilimani Police Station and recorded vide OB55/12/3/2012. The child, then aged one month old, was admitted to Newlife Home Trust on the same day and later committed to the said Home on 8<sup>th</sup> June 2012 for care and protection by the Children's Court at Nairobi vide **Care and Protection Case No. 164 of 2012**.
3. A report from the District Children's Office, Westlands dated 26<sup>th</sup> March 2013 shows that the child was born through surrogacy by N S, a Kenyan citizen bearer of ID NO. **[particulars withheld]**, to a Swedish couple Mrs I M J and Mr M S of Passport numbers **[particulars withheld]** and **[particulars withheld]**, respectively, as evidenced by the surrogacy agreement signed by them and dated 4<sup>th</sup> February 2012. Efforts to trace the child's surrogate and biological parents have not borne fruit. The child was declared as an abandoned child the Children's Court at Nairobi vide **Misc. Case No. 19 of 2014**. The Court further declared the child a Kenyan citizen by birth and nullified the surrogacy agreement. The child was declared free for adoption on 23<sup>rd</sup> April 2014 by Kenyans to Kenyans Peace Initiative (KKPI) Adoption Society and placed with the applicants on 26<sup>th</sup> September 2014. This court takes note of the letter dated 27<sup>th</sup> February 2013 from the Embassy of Sweden, Nairobi, through I R, the Head of **[particulars withheld]** and **[particulars withheld]** Section, to the effect the R.K. is not a Swedish citizen and that the commissioning Swedish couple are not the boy's legal parents.
4. The Director of Children Services, KKPI Adoption Society as well as the guardian *ad litem* D M N have each assessed the applicants and prepared reports regarding their suitability to adopt the child. They all report that the applicants are suitable adoptive parents, that the child R.K. has

bonded well with the applicants and thus the adoption would be in the child's best interest.

5. This being an international adoption, the **Children Act** at **Section 162** sets out the requirements to be met by the applicants. The applicants have complied with the same as evidenced by the following:-
  - a. a report from Help a child e.V. Children Find Parents, a German Adoption Agency approved to conduct adoptions in Kenya, dated 20<sup>th</sup> July 2012 which found them eligible to jointly adopt according to German law. It was noted that they meet all personal, social and financial requirements to adopt a child from Kenya;
  - b. a certificate issued by the Joint Central Adoption Agency Rheinland-Pfalz and Hessen dated 25<sup>th</sup> April 2013 stating that an adopted child automatically acquires German citizenship provided one adoptive parent is a German citizen;
  - c. a certificate of Legal Eligibility for Adoption of a child from Kenya, issued by Mayor, City of Witten, Department of Youth and Education, Educational Services Office dated 18<sup>th</sup> October 2012 which finds the applicant eligible to adopt a child from Kenya;
  - d. Help a child e.V. Children Find Parents, a German Adoption Agency approved to conduct adoptions in Kenya, have undertaken to conduct post adoption placement assessment on the applicants and the child for a period of three years after the adoption; and
  - e. the Federal Office of Justice, Bonn have issued police clearance reports dated 25<sup>th</sup> April 2012 showing the applicants have no criminal record.
6. This Court is of the opinion that it is in the best interests of the child to be adopted by the applicants. The applicants have demonstrated their ability to provide a conducive home and family environment to enable the child grow and develop. The applicants shall assume all parental rights and duties of the biological parents of the child, once adopted. They shall treat the child as if he was born to them. They have been made aware that once the adoption order is made, it shall be final and binding during the lifetime of the child and that the child shall have the right to inherit their property. The applicants shall not be able to give up the child owing to any subsequent unforeseen behaviour or other changes in the child.
7. Having been satisfied that all the legal requirements for international adoption under **section 162** of the **Children Act** have been met, the following orders shall issue:-
  - a. the applicants E R and C M R are hereby allowed to adopt baby R.K. who shall henceforth be known as R N K R;
  - b. the child's date of birth shall be 6<sup>th</sup> February 2012, and shall be presumed Kenyan by birth having been abandoned at Amaica Restaurant in Nairobi, Kenya;
  - c. G A C of Augustenstr. *[particulars withheld]*, *[particulars withheld]* Bruchsal, Germany is hereby appointed the legal guardian of the child should anything happen to the applicants before the child is of age;
  - d. the Registrar General is directed to enter this adoption in the Adoptions Register;
  - e. the Director of Immigration Services is hereby ordered to issue R N K R with a Kenyan Passport; and
  - f. the guardian *ad litem* is hereby discharged.

**DATED at NAIROBI this 7<sup>th</sup> day of April 2015**

**A.O. MUCHELULE**

**JUDGE**

**DELIVERED at NAIROBI this 7<sup>th</sup> day of April; 2015**

**W. MUSYOKA**

**JUDGE**