



**THE REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**ADOPTION CAUSE NO. 58 OF 2015**

**IN THE MATTER OF CHILDRENS ACT CAP 141**

**AND**

**IN THE MATTER OF BABY M J K**

**P J B R.....1<sup>ST</sup> APPLICANT**

**A K T.....2<sup>ND</sup> APPLICANT**

**JUDGMENT**

Before this court is an application filed by the Applicants P J B R and A K T seeking adoption of Baby M J K. The first applicant is French and the second applicant is Danish. The applicants got married on 29<sup>th</sup> of October 2011. The first applicant is a network engineer in *[particulars withheld]* Ltd and the second applicant is a Photographer. The applicants have not been blessed with children in their marriage for medical reasons. The applicants resorted to raising a family through adoption. The applicants expressed their wishes of adopting a child specifically from Kenya to an adoption agency, AC International Child Support-Denmark, which is approved by the Kenya's Adoption Committee to conduct international adoptions. The adoption agency carried out a home study and found the applicants suitable to adopt a foreign child. The State Administration for Greater Copenhagen and the National Social Appeals Board of Denmark in their documents dated 21<sup>st</sup> August 2012 and November 2012 respectively, granted the applicants permission to proceed with the adoption of a foreign child. Their application was sent via Kenya Children's Home, a local adoption society and the same was approved by National Adoption Committee of Kenya sitting on the 22<sup>nd</sup> of July 2014. The Danish Ministry of Social Affairs and Integration, in its letter dated November 2012, confirmed that the Danish Government will recognize the adoption order and the Danish Embassy in Nairobi will issue a Danish passport to the child thereby adopted.

The child, Moses J K was abandoned at Sambusa Area Kericho on 11<sup>th</sup> March 2013. He was presumably born on 10<sup>th</sup> of February 2013. The matter was reported to Kericho Police Station vide OB No. 41/11/3/2013 and he was taken to Kericho District Hospital for medical checkup. The child was placed under care and protection of Mogogosiek Children's Home. The child was committed to the same home by the Resident Magistrates Children's Court at Kericho vide Protection and Care Case No. 48 of 2013. A letter dated 16<sup>th</sup> September 2013 from Kericho Police Station confirmed that traces of the relatives of the child had been done but all in vain. The child was declared free for adoption by Kenya Children's Home, an adoption society on the 16<sup>th</sup> of July 2014 and a certificate no. *[particulars withheld]* was issued in that respect. The child was placed under the mandatory custody to the applicants vide foster care agreement form dated 26<sup>th</sup> November 2014. The court appointed A N as the guardian ad litem from the order dated 26<sup>th</sup> march 2015.

Reports were made by the AC International Child Support-Denmark, Kenya Children's Home, the guardian ad litem and the Director Children's Services prior the adoption hearing. The court evaluated the same and they recommended the adoption. This being an international adoption, there are conditions that have to be satisfied before granting the same according to **section 162 of the Children's Act**. The first condition is consent of the parents or relatives that has to be sought. The court evaluated all the reports made by Kenya Children's Home, Director of Children's Services and guardian ad litem respectively and

they all confirmed that the child was abandoned at Sambusa Area Kericho on the 11<sup>th</sup> of March 2013. The matter was reported to Kericho Police Station vide OB No. 41/11/3/2013. A letter dated 16<sup>th</sup> September 2013 from Kericho Police Station confirmed that tracing on the relatives of the child was done for six months but all in vain. In this matter, the consent of the parents or relatives is dispensed with pursuant to **section 159(1)(a)(i) of the Children's Act.**

As regards the second condition, the applicants were assessed by a foreign adoption agency, AC International Child Support-Denmark, approved them to be favorable parents and can proceed to adopt a foreign child. The State Administration for Greater Copenhagen and the National Social Appeals Board of Denmark in their letters dated 21<sup>st</sup> August 2012 and November 2012 respectively, granted the applicants permission to proceed with adopting a foreign child. The Danish Ministry of Social Affairs and Integration gave an assurance in their letter dated November 2012 that the Danish government will recognize the adoption order granted in Kenya and the Danish Embassy in Nairobi will proceed to issue a Danish passport to the child thereby adopted on presentation of the said order. Hence the applicants satisfied this condition.

The third condition was fully satisfied according to the reports made by foreign adoption agency, AC International Child Support-Denmark, guardian ad litem, District Children's Services and the local adoption society. The foreign adoption agency, AC International Child Support carried out a home study on the applicants and approved them to be emotionally and financially stable to adopt a foreign child. Locally, the local adoption society Kenya Children's Home affirmed that the applicants were suitable parents for adoption and the National Adoption Committee affirmed the same sitting on the 22<sup>nd</sup> of July 2014. The guardian ad litem observed during her home visits to the applicant's house in Kilimani that the child had bonded well with the applicants. The applicants have given the child good care and taught him how to communicate in Danish. The guardian ad litem therefore approved them to be suitable to adopt the child together with the Director Children's Services according to her report. The applicants have no criminal record as per the certificates from the Danish police dated 12<sup>th</sup> and 13<sup>th</sup> December 2012. The letter from ministry of justice, department of family affairs Denmark dated November 2012 confirmed that they attended a pre-adoption preparatory course and are fit of adopting a child.

The court is of the opinion that it's in the child's best interest to be adopted by the applicants since they have met the criteria of international adoptions. The court makes the orders that the applicants shall assume the responsibilities of parents to the child as one born in marriage. The child shall be entitled to inherit from the property of the applicants and shall not be given up because of any eventualities that might result; like bad behavior. The applicants shall grant the adoption society access in their country to perform the post-adoption supervision and or for a period of three (3) years and at any reasonable time. AC International Child Support has guaranteed this court that it shall carry out the post-adoption supervision and shall avail the annual reports for a period of three (3) years.

The court hereby grants adoption of the child to the applicants P J B R and A K T. The child shall be known as L J K R-T. His date of birth shall be 10<sup>th</sup> February 2013 and the place of birth shall remain Kericho. The child is presumed to be a Kenyan citizen by birth. The legal guardians of the child shall be K B A and C A of *[particulars withheld]*, Denmark, should any misfortune occur. The guardian ad litem is hereby discharged. The Registrar General should thereby enter the order of adoption. It is so ordered.

**READ AND SIGNED IN OPEN COURT ON THIS 5TH DAY OF JUNE, 2015**

**M. W. MUIGAI**

**JUDGE**

***In the presence of;***

***Mr. Marura Holding brief for Mr. Mwenda***