

THE REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

ADOPTION CAUSE NO. 135 OF 2015

IN THE MATTER OF BABY L N

B E R A.....1ST APPLICANT

E A.....2ND APPLICANT

JUDGMENT

The Applicants B E R A and E A made an application before this court seeking adoption of baby L N. The Applicants are citizens of Sweden. They got married on 14th May 2004. The first Applicant is employed as a technical engineer at PRC Engineering AB while the second Applicant is employed as an activation educator at Hinnebackssolan, Gothenburg. 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 approached relevant authorities in Sweden with a view to secure the requisite approvals to enable them adopt a child, specifically a foreign child. They were assessed by the National Board of Health and Welfare, Municipality of Kungälv who approved them to be favorable to adopt a foreign child. The Applicants obtained consent from the Kungälv, Social Welfare Committee to adopt a foreign child. The certificate is dated 19th August 2013. It is the said local authority which has jurisdiction to approve the application by the Applicants to adopt a child. Applicants were also assessed by Adoptions Centrum, Sweden, a foreign adoption society approved by the National Adoption Committee of Kenya. The National Adoption Committee of Kenya duly approved the application by the Applicants to adopt a child in Kenya. A certificate to that effect was issued on 16th September 2014. The Swedish Migration Board confirmed in their letter issued on 18th August 2008 that the Sweden recognizes foreign adoptions. The child is guaranteed of citizenship once adoption is finalized in Kenya.

Baby L N who is the subject of the present adoption proceedings was born on 13th May 2013 at Juja Farm Health Centre. Due to his low birth weight, the child was referred to Thika Level 5 Hospital for care and treatment. The child was admitted at the hospital's new born unit on 19th May 2013. Records from the hospital show that the child's biological mother is one M T. The child's mother abandoned the child on 28th May 2013 when she absconded from the hospital. The matter was reported to Thika Police Station vide OB no. 31/25/07/2013. He was placed under the care and protection of Mogra Soul Winner Children's Home. The Thika Senior Principal Magistrate Children's Court committed the child to the said home vide Protection and Care Case No. 232 of 2013 on 8th August 2013. The Police with their letter dated 3rd September 2014 confirmed that tracing of the relatives was done for six months but all in vain. The child was declared free for adoption by Little Angels Network an adoption society and a certificate no[particulars withheld] was issued on the 29th October 2014. The child was placed under the mandatory custody to the Applicants vide foster care agreement form dated 23rd February 2015. The court appointed J M M as the guardian ad litem through an order dated 12th June 2015.

Reports were made by the guardian ad litem and the Little Angels Network prior to the adoption hearing. The court evaluated the same and they were recommending the adoption. The Applicants have no criminal record according to the certificates from the Swedish National Police Board dated 5th February 2014.

This being an international adoption, there are pre-requisites that have to be met before granting the same according to **section 162 of the Children's Act**. The first pre-requisite is the consent of the parents or relatives has to be sought. The court evaluated all the report made by Little Angels Network and the letters from Thika Police Station respectively and they both confirm that the child was abandoned by the mother at the Thika Level 5 Hospital. The Police with their letter dated 3rd September 2014 confirmed that tracing of the relatives was done for six months but all in vain. For this case, 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 pre-requisite, is that the Applicants must be approved by relevant adoption authorities in their country of origin. The Applicants were assessed by National Board of Health and Welfare, Municipality of Kungälv who approved them to be favorable parents and can proceed to adopt a foreign child. The Applicants obtained consent from the Kungälv, Social Welfare Committee to adopt a foreign child. The certificate is dated 19th August 2013. The Swedish Migration Board confirmed in their letter issued on 18th August 2008 that Sweden recognizes foreign adoptions as having the same effect as the adoptions carried out in their jurisdiction. The child is guaranteed of citizenship once adoption is finalized in Kenya. This signifies that the Applicants have satisfied this condition.

The third pre-requisite is that the Applicants must be approved by the National Adoption Committee in Kenya to adopt a child in Kenya. The applicants have been assessed by the said National Adoption Committee. A certificate has been issued by the said committee approving the applicants' application for adoption. The certificate is dated 16th September 2014.

The Applicants have had the custody of the child since 23rd February 2015. During the home visits, the guardian ad litem observed that the child had bonded well with the Applicants. He was in good care of the Applicants and has had a positive growth socially, physically and emotionally. The child considers the Applicants as his parents. The guardian ad litem approved them to be fit and favorable to adopt the child.

The court finds that the Applicants have met the criteria of international adoptions and it would be in the child's best interest if he was adopted. 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 for a period of three (3) years and at any reasonable time and shall give this court guarantee that the child shall be granted citizenship once adoption is finalized. Adoptions Centrum, a foreign adoption society has guaranteed court that it shall carry out post adoption supervision and shall avail reports of the same for a period of three (3) years.

Adoption of the child is hereby granted to the Applicants B E R A and E A in this matter. The child shall be known as S E L A. Her date of birth shall be 13th May 2013 and the place of birth shall remain Juja Farm Health Centre- Thika. She is presumed to be a Kenyan citizen by birth. Should any misfortune occur, the child's legal guardians shall be Per E W and A M T (close friends of the Applicants). The guardian ad litem is hereby discharged. The Registrar General should thereby enter the order of adoption. It is so ordered.

READ, SIGNED AND DATED AT NAIROBI THIS 6TH DAY OF NOVEMBER, 2015

M. MUIGAI

JUDGE

In the presence of;

Mr. Kiguatha holding brief for Mr. Ogutu