



**REPUBLIC OF KENYA**

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

**ADOPTION CAUSE NO. 180 OF 2013**

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

**AND**

**IN THE MATTER OF BABY S M - MINOR**

**T J U.....1<sup>ST</sup> APPLICANT**

**P T H U.....2<sup>ND</sup> APPLICANT**

**J U D G M E N T**

The applicants, T J U and P T H U, are citizens of Finland. They were married on 20<sup>th</sup> June 2009. The 1<sup>st</sup> Applicant is a freelance translator while the 2<sup>nd</sup> Applicant is a teacher. The Applicants have so far not been blessed with any biological children of their own. They applicants wish to adopt a child. In this regard, the Applicants approached the relevant authorities in Finland with a view to securing the requisite approvals to enable them adopt a child, specifically a foreign child. The applicants were investigated by the Save the Children, Finland. The Ministry of Social Affairs and Health- Finnish Adoption Board found them to be suitable parents to adopt a child. Under Finnish Adoption Laws, it is the said local authority which has jurisdiction to approve the application by applicants to adopt a child. The said Ministry of Social Affairs and Health- Finish Adoption Board issued a certificate approving the said application for adoption. The approval is dated 7<sup>th</sup> June 2013. This certificate was issued on behalf of the Central Authority on Inter-country Adoption. The applicants were further assessed by Interpedia, Finland, a foreign Adoption Society duly approved by the National Adoption Committee of Kenya. They were duly approved as suitable to adopt a foreign child. The National Adoption Committee of Kenya duly approved the application by the applicants to adopt a child in Kenya. A certificate dated 20<sup>th</sup> February 2013 was issued to that effect.

Baby S M, the child, the subject of these adoption proceedings was born on 25<sup>th</sup> May 2011. He was given up to the Vihiga District Children's Officer by his parents after being labeled a taboo baby for being born out of an incestuous relationship. The child was, on advice of the Vihiga District Children's Officer admitted at PEFA Rehema Children's Home. The Children's Court Kakamega committed the custody of the child to the said children's home on 7<sup>th</sup> September, 2012 pending these adoption proceedings. The child was placed under the custody of the applicants on 9<sup>th</sup> May, 2013 for compulsory foster care. Since then, the child has been under the custody of the applicants. The consent of the biological parents of the child to the adoption was obtained on 4<sup>th</sup> July 2012. Little Angels Network, an Adoption Society issued a certificate declaring the child free for adoption. The certificate is dated 5<sup>th</sup> December 2012.

The court read the reports prepared by Little Angels Network, the local adoption society, Save The Children, Finland, The Ministry of Social Affairs and Health-Finnish Adoption Board, the Director of Children's Services and by R M N, the guardian ad litem. All the above reports are favourable and recommend the applicants' application to adopt the child. This is an international adoption. There are certain conditions that the applicants must fulfill before this court can allow them to adopt the child. The first condition is that the applicants must be approved by the relevant adoption authorities in their country of origin. In the present case, the applicants have been assessed and approved by the relevant authorities in their country of origin, Finland. This court had the benefit of reading the report prepared by the foreign adoption society. This court is satisfied that the applicants have been approved by the relevant authorities

in Finland to adopt a foreign child, and specifically a Kenyan child. The second condition 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 to adopt a child in Kenya.

The third condition is that the applicants must satisfy the court that they have fulfilled the legal requirements regarding the adoption, including having custody of the child for a sufficient period to enable bonding to take place. This period must not be less than three (3) months. It was clear to the court that the applicants have fulfilled all the legal requirements in respect to international adoption. The applicants have had the custody of the child since 9<sup>th</sup> May 2013. In the period that the child has been in their custody, the child has bonded with them. This was evident from the reports prepared by the Director of Children's Services, the guardian ad litem and the local adoption society. The applicants have established that they have the financial and emotional capability to take care of the child. The court saw the child in court. The said child is thriving under the care of the applicants.

Having evaluated all the reports on record, and the applicants' application seeking to be granted permission to adopt the child, it was clear to this court that it would be in the best interest of the child for the application for adoption to be allowed. The applicants have given an undertaking that they shall allow access to the approved adoption society in their country of origin to undertake post-adoption supervision for a period of three years from the time of the issuance of this adoption order. The applicants have executed an undertaking that if this court grants the adoption order, they will permanently assume all the parental rights and duties of the biological parents in respect of the adopted child; they shall treat the adopted child as if he was born to them in their marriage; they have been made aware that once the adoption order is issued, it shall be final and binding during the lifetime of the child that they shall adopt; that the child shall have the right to inherit their property; that an adoption order cannot be recanted, and further, that they shall not give up the child owing to any subsequent unforeseen behaviours or other changes in the child; that the adoption society in Finland (foreign adoption society) shall provide annual follow up reports on the progress of the child to the Adoption Society in Kenya (local adoption society) for a period of three (3) years from the date of the arrival of the child in Finland; that the applicants undertake to allow the representatives of the Foreign Adoption Society in Finland free access to the child at any reasonable time. The applicants further give an undertaking that they shall accord their citizenship to the child.

In the premises therefore, this court finds that the applicants have met the criteria set for international adoptions. The applicants, T J U and P T H U are hereby authorized to adopt baby S M. The child shall henceforth be known as A S J U. P H P and H M S, friends of the applicants are hereby appointed to be the legal guardians of the child should misfortune befall the applicants. The Registrar General is hereby directed to enter this order in the Adoption Register. The guardian ad litem is hereby discharged. It is so ordered.

**DATED AT NAIROBI THIS 7<sup>TH</sup> DAY OF FEBRUARY, 2014**

**L. KIMARU**

**JUDGE**