

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO.189 OF 2013

IN THE MATTER OF THE CHILDREN ACT, 2001

AND

IN THE MATTER OF BABY T.K ALIAS U.A.M - MINOR

A.K.M.Å.....1STAPPLICANT

O.E.E.Å.....2NDAPPLICANT

JUDGMENT

The applicants, A.K.M.Å and O.E.E.Å, are Swedish citizens. They were married on 3rd May 2008. The 1st applicant is an economist currently working as a company advisor at *[particulars withheld]* while the 2nd applicant is an engineer working at *[particulars withheld]*. The applicants have so far not been blessed with any children due to medical reasons. The applicants wish to adopt a child. The applicants approached the relevant authorities in Sweden with a view to securing the requisite approvals to enable them adopt a child, specifically a foreign child. The applicants were investigated by the the Municipality of Kalmar Social Welfare Committee on behalf of the Swedish Government who found them to be suitable parents to adopt a child. Under Swedish Adoption Laws, it is the said local authority which has jurisdiction to approve the Applicants to adopt a child. The said approval has been confirmed by the Swedish Inter-country Adoption Authority. The applicants were further assessed by the Children Above All Adoptions, 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 applicant to adopt a child in Kenya. An approval certificate to that effect was issued on 24th April 2013 by the said committee.

Baby T.K alias U.A.M, the child, the subject of these adoption proceedings was found abandoned at Kibazi Shopping Centre in Nakuru on 31st March 2012. He was rescued and taken to Nakuru Police Station. After recording the incident, the child was, on the same day, referred to African Gospel Church Baby Center for care and protection. The Children's Court Nakuru did on 23rd May 2012 commit the custody of the child to the said children's home. The child was placed under the custody of the applicants for compulsory foster care on 24th May 2013. Since then, the child has been in the care and custody of the applicants. According to the police, their effort to trace the biological parents of the child has been in vain. A report to that effect has been filed in court. No one has come forward to claim the child. This court therefore dispenses with the consent of the biological parents to the proposed adoption by the applicants. Kenya Children's Home, an Adoption Society issued a certificate declaring the child free for adoption. The certificate is dated 12th February 2013.

The court read the reports prepared by Kenya Children's Home, the local adoption society, the Municipality of Kalmar Social Services Administration in Sweden, the Director of Children's Services and by S.M.M, 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, Sweden. 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 Sweden 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 24th 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.

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 Sweden (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 Sweden; that the applicants undertake to allow the representatives of the foreign adoption society in Sweden 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, A.K.M.Å and O.E.E.Å are hereby authorized to adopt baby T.K alias U.A.M. The child shall henceforth be known as H.T.K.Å . S.E.M.A and K.P.M.E, sister and brother- in- law of the 2nd applicant are hereby appointed to be the legal guardians of the child should misfortune befall the applicants. His date of birth shall be 31st March 2012. His place of birth shall be Nakuru, Kenya. 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 7TH DAY OF FEBRUARY, 2014

L. KIMARU

JUDGE