



**REPUBLIC OF KENYA**

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

**ADOPTION CAUSE NO. 257 OF 2013**

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

**AND**

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

**S.Z.....1<sup>ST</sup> APPLICANT**

**A.L.....2<sup>ND</sup> APPLICANT**

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

The applicants, S Z and A L are citizens of Italy. They were married on 31<sup>st</sup> May 2002. The 1<sup>st</sup> applicant is a Sales Representative while the 2<sup>nd</sup> applicant is a Patent Examiner. 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 the Italy with a view to securing the requisite approvals to enable them adopt a child, specifically a foreign child. The applicants were investigated by the Social Affairs Department of the Consulate-General of Italy, Munich in Germany and obtained approval of the Children's Court of Rome on 5<sup>th</sup> April 2011. The National Adoption Committee of Kenya duly approved the application by the applicants to adopt a child in Kenya. The approval certificate to that effect was issued on 20<sup>th</sup> February 2013.

Baby S W, the child, the subject of these adoption proceedings was found abandoned within a rescue center in Eldoret on 31<sup>st</sup> March 2011. A report was made to Eldoret Police Station. The child was placed with Lewa Children's Home for care and protection. She was committed by the Eldoret Children's Court to the custody and care of the said children's home by an order issued on 15<sup>th</sup> May 2013 pending adoption proceedings. The child was placed under the custody of the applicants on 26<sup>th</sup> July 2013 for compulsory foster care. Since then, the child has been under the care of the applicants. According to the police, their effort to trace the biological parents of the child has been in vain. No one has come forward to claim the child. A report to that effect has been filed in court. This court therefore dispenses with the consent of the biological parents to the proposed adoption by the applicants. Kenya Children's Homes, an Adoption Society issued a certificate declaring the child free for adoption. The certificate is dated 29<sup>th</sup> May 2012.

The court read the reports prepared by Kenya Children's Homes, the local adoption society, Dr. Mario Elicio on behalf of the Social Affairs Department of the Consulate-General of Italy, Munich, Germany, the Director of Children's Services and by E A 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, Italy. This court had the benefit of reading the report prepared by Dr. Mario Elicio. This court is satisfied that the applicants have been approved by the relevant authorities in the Italy 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 26<sup>th</sup> July 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 Italy (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 Italy; that the applicants undertake to allow the representatives of the foreign adoption society in Italy 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, S Z and A L are hereby authorized to adopt baby S W. The child shall henceforth be known as W Z. Her date of birth shall be 5<sup>th</sup> June 2009. Her place of birth shall be Eldoret, Kenya. G P and M A L, brother-in-law and sister of the 2<sup>nd</sup> applicant 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**