

REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Adoption Cause 2 of 2013

IN THE MATTER OF THE CHILDREN ACT, 2001

AND

IN THE MATTER OF BABY EN alias ENM - MINOR

THS 1ST APPLICANT

BMS.....2ND APPLICANT

JUDGMENT

The applicants, THS and BMS are German citizens. They have lived together since 1999 but formalized their marriage on 24th June 2005. The 1st applicant is a Quantity Officer at [particulars withheld] Motors while the 2nd applicant is a Bank Clerk with R[...] Bank. The applicants have so far not been blessed with any children due to biological reasons. The 1st applicant however has a daughter from a previous relationship who is now aged twenty two (22) years and who is disabled. They wish to adopt a child. The applicants approached the relevant authorities in the Germany with a view to securing the requisite approvals to enable them adopt a child, specifically a foreign child. The applicants were investigated by the Eltern Fur Afrika Germany, a foreign adoption society duly approved by the German Federal Central Authority for Inter-country adoptions under the Federal office of Justice in Germany and the Adoption Agency of the Youth and Family Office of Rottal am Inn, Germany. The said authority approved the applicants' application to adopt a child from Kenya on 6th March 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 19th September 2012.

Baby EN alias ENM, the child, the subject of these adoption proceedings was born on 20th August 2011 at Thika Level 5 District Hospital. He was born prematurely. His biological mother recorded her name as EN On 3rd September 2011, the biological mother abandoned the child at the new born unit in the same hospital. The matter was reported to Thika Police Station on 23rd September 2011. The child was taken to Thomas Barnados Home for care and protection. The Thika Children's Court did commit the custody of the said child to the said children home on 19th October 2011 pending formal adoption proceedings. The child was placed under the custody of the applicants on 9th October 2012 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 Home Adoption Society, an Adoption Society issued a certificate declaring the child free for adoption. The certificate is dated 14th August 2012.

The court read the reports prepared by Kenya Children's Home Adoption Society, the local adoption society, Eltern Fur Afrika, Germany, Adoption Agency of the Youth and Family Office of Rottal am Inn

Germany, the Director of Children's Services and by Kennedy Otieno Alando, 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, Germany. This court has seen the certificate issued by the Central Authority for Adoption in Bavaria, Germany confirming the approval by the German government of the application by the applicants to adopt a child from Kenya. 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 the Germany 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 of time 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 9th October 2012. 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 Germany (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 Germany; that the applicants undertake to allow the representatives of the foreign adoption society in Germany 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, THS and BMS are hereby authorized to adopt baby EN alias ENM. The child shall henceforth be known as ENS. ZR the sister of the 1st applicant is hereby appointed to be the legal guardian 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 12th DAY OF APRIL, 2013

L. KIMARU

JUDGE