

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO.289 OF 2012

IN THE MATTER OF THE CHILDREN ACT, 2001

AND

IN THE MATTER OF BABY B – MINOR

R T D.....1ST APPLICANT

C C D.....2ND APPLICANT

JUDGMENT

The applicants, R T D and C C M D, are husband and wife. They were married on 27th January 1988 in Australia. The 1st Applicant holds dual citizenship of Australia and the United Kingdom. The 2nd Applicant holds a dual citizenship of Australia and United States of America. The Applicants are missionaries with the Friends Quakers Church. The Applicants have not been blessed with any biological children. They have been residents in Kenya since 2004. They have therefore made this application as foreign residents in Kenya. This is under the Rule that allows foreigners who have been in Kenya for a period of more than three (3) years to adopt a child as such. The Applicants have previously adopted another child from Kenya. The adoption order was issued by this court on 9th June 2011. The applicants wished to adopt another child. Baby B A (the child) was born on 18th November 2007 at Kakamega Provincial General Hospital. The child was abandoned by her mother two days after his birth when she absconded from the hospital. A report of the abandonment was made to Kakamega Police Station. The child was discharged from the hospital and taken to Pefa Rehema Children’s Home for care and protection. She was committed by the Kakamega Children’s Court to the custody of the said Children’s Home on 7th March 2008 pending formal adoption proceedings. The Applicants were given custody of the child for mandatory foster care pending adoption pursuant to a foster care agreement which was signed on 21st January 2009. They took custody of the child on the same day. Since then, the child has been in the continuous custody and care of the applicants.

Prior to the hearing of the adoption, the Adoption Society, Little Angels Network, prepared a report which is filed in court. They also issued a certificate declaring the child free for adoption. The certificate is dated 24th October 2012. The Director of Children’s Services prepared a report which is on record. The guardian ad litem, E W K, prepared a report which has been filed in court. All the reports are favourable and recommend that the court allows the applicants to adopt the child. I have evaluated the facts of this adoption. This is an adoption by foreign residents in Kenya. It is evident that the applicants have fulfilled all the legal requirements pertaining to the adoption of the child. The consent of the biological parents of the child was dispensed with since the child was abandoned at birth. They cannot be traced to give their consent. This court is satisfied that the applicants are qualified and able to take care of the child. The home visits by the guardian ad litem, the Adoption Society and the Director of the Children Services established that the applicants have the financial capability to provide for the upkeep and education of the child. This court observed that the applicants with the child in court. It was evident that in the period that the applicants have had the custody of the child, the child has bonded well with them. The child considers the applicants his parents. The applicants proved their capacity to provide for the adopted child by the fact that they have previously adopted another child through this court. The child is presently a high school student in Australia.

This court formed the opinion that it would be in the best interest of the child to be adopted by the applicants. I allow the applicants' application for adoption. The applicants, R T D and C C M D, are hereby allowed to adopt Baby B A. Henceforth, the child shall be known as A B D. His date of birth shall be 18th November 2007. His place of birth shall be Kakamega Provincial General Hospital, Kakamega Kenya. F L G and K E G, family friends of the applicants, shall be the legal guardian of the child should such eventuality arise. I direct the Registrar General to enter this order in the adoption register. I hereby discharge the guardian ad litem. It is so ordered.

DATED AT NAIROBI THIS 1ST DAY OF NOVEMBER, 2013

L. KIMARU

JUDGE