



**IN THE HIGH COURT OF MALAWI**  
***LILONGWE DISTRICT REGISTRY***  
**ADOPTION CAUSE NUMBER 01 of 2017**

**IN THE MATTER OF THE ADOPTION OF CHILDREN ACT CAP. 26:01**  
**AND**

**IN THE MATTER OF E.M. (A FEMALE INFANT) OF ... ORPHANAGE, P.O. BOX ...**  
**IN THE MATTER OF S.M. (A FEMALE INFANT) OF ...ORPHANAGE, P.O. BOX ...**

**AND**  
**IN THE MATTER OF M.L.C OF ..., ALSO OF ..., UNITED STATES OF AMERICA**

**CORAM: HON. JUSTICE F.A. MWALE**  
Mvalo, Counsel for the Petitioner  
Kaferanthu, Official Interpreter  
Mr. D. Misomali, Guardian-ad-Litem

**IN ATTENDANCE:**

Ms. M.L.C.	: Petitioner
Mr. A.M.	: Father of infants
Mr. Z.S.P.	: Maternal uncle of the infants
E.M.	: 1 <sup>st</sup> Infant
S.M.	: 2 <sup>nd</sup> Infant

**Mwale, J.**

**JUDGMENT**

**I. Introduction**

1. Ms. Madonna Louise Ciccone presented two Petitions, **Adoption Cause No.1 of 2017** and **Adoption Cause No.2 of 2017** for the adoption of two female infants named E.M. and the other named S.M., hereinafter referred to as “the infants”. The infants are twins

and as

such each Petition refers to the same parties, facts and. In the interests of efficiency and expediency, I consequently exercised my discretion to consolidate the two Petitions into one cause, **Adoption Cause No.1 of 2017** The said consolidated Petition is supported by:

- (a) an Affidavit for each infant;
- (b) Skeleton Arguments;
- (c) a Guardian-ad-Litem Report compiled by the Department of Social Welfare in the Ministry of Gender, Children and Community Development in the Malawi Government to which an adoption Home Study Report prepared by an accredited social worker in the petitioners' country of origin, the United States of America, with supporting documentation all properly apostilled is attached; and
- (d) Consent to Adoption Orders signed by the infant's next of kin.

## **II. Factual Background Factual Background of the Infants and Petitioner**

2. According to the Report of the Guardian-ad-Litem, the infants in this matter were born on 24<sup>th</sup> August 2012 and are aged 4 years and 7 months at the time of the hearing of the Petition. They hail from ... Their father, A.M. is still alive, but their mother, P.S.P. died within one week of delivering them on 29<sup>th</sup> August 2012 from Caesarian Section complications. A death report has been submitted as proof of her death. The infants have 5 siblings aged between 8 years and 20 years. The oldest is married and the rest are still in school. After the death of his wife, the infants' father left the village to marry another woman without making any arrangement for their maintenance. The infants' maternal grandmother who is in her seventies immediately assumed their care as there was no one else to take on this role. The grandmother is a subsistence farmer who barely grows enough food to feed herself. The additional toll of 7 children including two new born babies was way beyond her means. In such dire straits, the maternal grandmother was left with no option but to surrender the infants to ...Orphanage which not only took in the two youngest, but also supported the siblings by paying for their education.
3. The Department of Social Welfare acknowledges that .... District is one of the Districts

with the highest poverty ratings in the country and even the social cash transfer scheme that is being piloted in some districts in the country has not yet reached .... As such, it is charitable institutions that meet the needs of a few select families such as that of the infants and their siblings in this matter. The Guardian-ad-Litem report has unfortunately provided no information as to whether the father of the infants was unable to provide for his children or whether he was simply unwilling to do so having decided to start a new family elsewhere. I wish to remind the Guardian-ad-Litem that such information is crucial to the Court's determination and ought to be included in every report. Suffice it to say that my examination of the father during the hearing revealed that he was unable to provide for all his children and had not completely abandoned them as it had appeared. Whatever little he was able to provide to his first family with the added burden of a new family was simply not enough to meet even their most basic needs.

4. The infants were institutionalised at the orphanage with the approval of the Department of Social Welfare and although institutionalisation is always the resort in the hierarchy of care options for children in need of care and protection, no person came forward with the intention of fostering or adopting them. Whilst their situation is less than ideal, the orphanage should be commended for its care of the infants who presented before the Court as well-looked after.
5. The petitioner Miss M.L.C. is a single adult, born on 16<sup>th</sup> August 1958. She is a citizen of the United States of America. She is an internationally renowned professional entertainer and artist. She has four other children, two boys and two girls aged between 11 and 20 years. Only the two youngest children who were also adopted from this country, live with her. The petitioner has a long standing history with Malawi and has undertaken a number of development projects in the country in the past. Her charity work brings her into contact with orphanages such as the one that took on the care of the infants and it was as a result of this contact that she felt compelled to fill a gap in their lives and open up her home to them.

### **III. The Law: Eligibility to Adopt/For Adoption**

6. There is no doubt that the petitioner satisfies the age requirements under section 3(1) of the Adoption of Children Act. The petitioner is above 25 years of age and the age difference between her and the infants is more than the 21 years set out in the law. With regard to the issue of residence under section 3(5) of the Act, the approach to be taken by the courts in determining residence was set out by the Malawi Supreme Court of Appeal in ***In the Matter of the Adoption of Children Act and in the Matter of C.J., (A Female Infant)*** [2009] MLR 220, that “residence” is defined not by the length of stay in a country, but by establishing a presence in the country by design and not by chance. Clarifying the current position of the law since the Malawi Supreme Court of Appeal’s re-definition of residence, the Honourable Justice Twea S.C. (as he was then) stated as follows in ***In the Matter of the Adoption of Children Act and in the Matter of T.M.*** 2009 MLR 247 at 251:

*“the courts are now enjoined to look at several factors including physical presence in a country, duration thereof motive for coming into the country: whether one came by chance or design, and intention to remain there for some time. No one factor should take prominence over others. In this respect therefore, whether or not one is resident in the country will depend on the evidence and facts of each particular case.”*

Thus, the petitioner, although based in the United States of America, has established a presence in Malawi and is often in the country for her charitable work. Her latest project for which she has raised USD\$7.5 million, the construction of a Paediatric Surgery Ward at Queen Elizabeth Central Hospital in Blantyre, is scheduled to open early next year and has seen the Petitioner in the country on a number of visits. It would be *per incuriam* for this Court to find that the petitioner does not qualify under the residency requirement when on the same evidence and facts she managed to satisfy the Malawi Supreme Court of Appeal in ***In the Matter of the Adoption of Children Act and in the Matter of C.J.*** (cited above) that she was resident in the country for the purpose of a previous adoption.

7. Therefore, having examined the petitioner’s eligibility to adopt, I must next consider the eligibility of the infants for adoption. One of the problems posed by a system in which prospective adoptive parents are able to visit orphanages and personally identify children for adoption is that there is a danger that the children identified may not be adoptable.

Some children in institutional care may have families in the community capable of assuming their care who have only placed them in care temporarily usually on account of

a crisis. It is only the Department of Social Welfare that has the mandate of determining the child's psychosocial adoptability. To this end, the Department of Social Welfare bears the responsibility for assessing all children in need of care and protection and identifying those who are in need of permanent care solutions such as adoption. Ideally therefore, legally eligible prospective adoptive parents must register as such so that they can be matched to an adoptable child by the Department. However, as I acknowledged ***In the Matter of the Adoption of Children Act and in the matter of G.M. (a Female Infant) Adoption Cause No. 9 of 2015***, Lilongwe District Registry (unreported), in the absence of legislation that prevents the prospective adoptive parent from identifying a child, the fact that the prospective adoptive parent has done so shall not operate against them unless it can be shown that the identification process was not in the child's best interests. Further, the petitioner has now undergone all the processes required to foster the infants with a view to adoption and the Department of Social Welfare has in this matter verified through the Guardian-ad-Litem that the infants are in fact psychosocially adoptable. I take this opportunity to appeal to Government to speedily act on the recommendations from the Malawi Law Commission's review of the Adoption of Children Act so that matters of psychosocial adoptability and identification of children for adoption are governed by statute.

8. Turning now to the infants' legal adoptability under section 3(3) of the Adoption of Children Act. This was confirmed by their father and maternal uncle both of whom as the infants' next of kin with parental rights and responsibilities have given their consent to the adoption. I took extra care during the hearing to confirm that both understood the nature and purpose of the proceedings they were attending. Both were able to confirm an understanding that adoption permanently terminates their parental rights and responsibilities, transferring them on to the petitioner should an order of adoption be granted in her favour. They both clearly and unequivocally reiterated their consent having understood these terms. Under Rule 5 of the Adoption of Children (High Courts) Rules consent is required to be evidenced in writing in the prescribed format in the Schedule to the Rules. As the consent was originally filed in a form that did not comply with the Rules, I directed that the appropriate form of consent be filed so as to leave no doubt that the

implications of their giving consent as set out on that form were read out to the infants' next of kin and their appended their signature to the form on the basis of that understanding. After extensive examination, I was further satisfied that neither had received any incentive nor had they been induced in any way to give their consent which I have concluded was freely given.

9. During my examination of the petitioner, it was also very clear that she had not conducted herself in any way so as to conduce the infants' next of kin to give their consent. The petitioner has also received nothing to influence her decision. Section 10 of the Adoption of Children Act proscribes the receipt of any reward or payment to any biological parent or guardian and equally proscribes the giving of any reward or payment to the biological parent, guardian or the prospective adoptive parent in consideration for an adoption. There is therefore no legal impediment to the adoptability of the infants.

#### **The Best interests of the Infants**

10. Adoption petitions are heard by the High Court as an exception to the general rule under section 134 of the Child Care Protection and Justice Act which gives generally child justice courts jurisdiction "over children matters". However, it is clear from the decision in *In the Matter of the Adoption of Children Act and in the Matter of the Adoption of Children Act and in the Matter of P.S. (a male infant)*, Adoption Cause No. 10 of 2012, Lilongwe District Registry (unreported) that the High Court has jurisdiction over inter-country adoption matters by virtue of section 9 of the Adoption of Children Act. In its exercise of jurisdiction over children the High Court must comply with the requirements of the Child Care, Protection and Justice Act and most importantly, it must give primacy to the rights of the child as set out in the Convention of the Rights of the Child (See section 88(b) of the Child Care Protection and Justice Act). In particular, as the Malawi Supreme Court of Appeal determined in *In the Matter of the Adoption of Children Act and in the Matter of C.J. (a female infant)* (cited above), the primary consideration in the grant of an order of adoption is "the best interests" of the infants concerned. These infants, according to both the Petition which as verified by the Guardian-ad-Litem Report have never been subject of any proceedings. The Petition must consequently be decided on its merits with the



Court

determining whether, in this particular instance, it would be in the best interests of the infants to grant of an order of adoption to the petitioner.

11. Despite its wide acclaim and frequent use, a leading expert in child rights has noted that there is a persistent lack of consensus on how, precisely, the best interests of a child are to be decided. Even the international standards themselves do not specify any criteria at all on how and by whom these interests should be determined.<sup>1</sup> Therefore in a bid to demystify principle for the purposes of inter-country adoption ***In the Matter the Adoption of Children Act and in the Matter of P.S.***, (cited above), 9 non-exhaustive factors that may serve as guidance were adopted. These factors are considered below as they relate to the infants before me. Thus, as I stated in that case,

*“Best interests” determinations should generally be made by considering a number of factors related to the circumstances of the child and the circumstances and capacity of the child's potential caregiver(s), with the child's ultimate safety and well-being as the primary concern.”*

**(a) Factor 1: The importance of family integrity and preference for avoiding removal of the child from his/her home.**

12. The first consideration for the Court is always whether maintenance of the *status quo* would be in the best interests of the child before it. There is a pre-condition though to maintaining the *status quo* and that is that such status must present the optimal conditions for the child's welfare in a secure family unit. It is always in the child's best interests that where stable and satisfactory family integrity exists, it should be maintained and protected. The two infants in these proceedings have no family capable of supporting them. Government has been unable to support the extended family in providing care for the infants. They are currently in institutional care and it is this institution that has provided for the needs not only of the infants, but also of their siblings. Locally, no family has come forward to foster or adopt them. They have therefore been in institutional care since birth and even though

<sup>1</sup>Cantwell, Nigel (2014). The Best Interests of the Child in Intercountry Adoption, *Innocenti Insight*, Florence: UNICEF Office of Research.

this care has enabled them to thrive, institutional care can never be a substitute for family care. The only way to ensure these two infant's best interests by introducing family integrity into their lives is if they were adopted.

**(b) Factors 2 and 3: The health, safety, and/or protection of the child and the absence of domestic violence or criminal activity in the home.**

13. These two factors usually considered together assist the court in determining the safety and protection of the infants within the home from both internal and external factors. The petitioner already has two other children in the home and from her testimony and the photographs she exhibited, these two older children are thriving in her care. The needs of the two infants are very different from their older siblings and is therefore important that the Court is satisfied that the petitioner has done all she can to provide a secure environment for the two younger infants.
14. The Adoption Home Study Report prepared in the petitioner's home country (forming part of the Report of the Guardian-ad-Litem) has provided evidence of the petitioner's efforts to ensure the safety and well-being of the infants. The said Adoption Home Study Report was duly notarized and apostilled in compliance with section 12 of the Authentication of Documents Act and is therefore admissible in these proceedings (see *In the Matter of the Adoption of Children Act and in the matter of G.M.* (cited above)). According to this report, neither the petitioner nor the two adults with substantial access to her home have any criminal history, checks having been conducted with the relevant authorities in the United States of America. In as far as can be reasonably provided therefore, the home presents no immediate risk of criminal elements jeopardizing the care and welfare of the infants.
15. With regard to the physical safety of the infants in and around the home, the home, is as is befitting of the status of the petitioner a luxurious, spacious and comfortable abode in an affluent neighbourhood. It is within easy access to all necessary amenities and services including emergency services. The interior is equipped with necessary safety features. There are no hazardous water features on site and all potential risks such as fire, electrical

or chemical hazards are secured out of the reach of children. It is therefore safe to conclude that the petitioners' home is in as far as can be reasonably and practically possible, does not pose any immediate threat to the safety and security of the infants and as such is conducive to their maintenance and welfare in a manner that is consistent with their best interests.

**(c) Factor 4: The assurance that a child shall be given care, treatment, and guidance that will assist the child in developing into a self-sufficient adult.**

16. Raising a child requires deliberate reasoned guidance if it is to fulfil the all-important societal function of producing self-sufficient adults capable of contributing positively to society. An upbringing that lacks the necessary order and structure to positively guide the infant's transition to adulthood cannot be in his or her best interests. During the hearing, I examined the petitioner at length on her motives for adoption and her philosophy in child rearing. This was done to ensure that the petitioner understands that the needs of the infants must always be placed above her own. Specifically, that in embarking on this journey of adoption, she would have to demonstrate that her motives are purely in the best interests of the infants with the ultimate aim of not just providing for their immediate needs or satisfying her own personal needs but to prepare them for a productive future.

17. To begin with, the petitioner satisfied me that this adoption is motivated by her desire to offer a home, love, protection and guidance to the infants. The petitioner appreciates her very privileged position and she would like to share what she has with those who are less privileged. In determining her motives, I questioned the petitioner at length about the impact of her decision which could be construed as robbing Malawi of its most precious resource, its children. In her response, the petitioner demonstrated that she has considered her actions and in all her plans to bring the infants into her life, contributing to the development of Malawi is one of her objectives for the children. She has even thought forward to a time in the future when her adopted children could contribute to the human resource for the Paediatric Ward she is constructing, should they be so minded. One of her other adopted children has already expressed the desire to

become President of Malawi someday. A future for these infants in Malawi is therefore a possibility. To this end, the

petitioner intends to give the infants the best attention possible to let them grow in a stimulating and safe environment so that as they grow up into adulthood, they go out into the world and share with others. She already models this behavior by taking her children with her on charity missions. The petitioner also testified that she encourages her children to believe in their dreams, work hard and never give up. Their regiment is not only limited to academics as she encourages them to take up other extracurricular pursuits such as music, soccer and gymnastics which the other two children in her home are passionate about. Their worldview is therefore holistically balanced and the two infants will be brought up no differently from the others.

18. The petitioner is also fully committed to bringing up the infants in full recognition of their cultural heritage as Malawians. Preserving their identity as Malawians is so important that she will maintain their birth names. To this end, the petitioner shall be taking a Malawian carer with her to the United States of America in order to ease the twins' transition into their new life and this carer shall assist her two older children learn Chichewa.
19. In terms of discipline, the petitioner practices a child rearing approach that is predicated on providing structure, consistency and appropriate boundaries that promote attachment and learning. She is opposed to corporal punishment and abusive language and ridicule as an appropriate means of discipline. Spiritually, the petitioner who has described herself as a believer in God testified gave evidence of the spiritual direction she gives the two children still in her home and will continue to give the two infants should an order be granted. There is ample evidence before me that the petitioner had put considerable thought into preparing a structured life for the infants. One with boundaries and direction which aim to secure a future that can only be in their best interests.
20. I am further left in no doubt that the petitioner has considered the implications of taking on twins, who by the attachment require a different approach to parenting that single born infants by her demonstrated knowledge on the subject of twins through her personal interaction with twins, having twin siblings and having undertaken extensive

research on twins. This knowledge is vital if she is to nurture them in a manner that nourishes their

developmental and psychological needs as twins.

21. The petitioner is a professional performer and I guarded myself against the danger of her merely reciting a well-rehearsed speech by asking her some rather uncomfortable questions to which she gave very candid answers. I also took time to find collaboration for her responses in the Adoption Home Study Report prepared by qualified social workers whose role it is to examine all circumstances in ensuring that a genuine adoption is carried out. The Social Workers in question after many hours of interview and assessment confirmed the petitioner's assertions especially with substantiation being provided with reference to the manner in which the other two children in the home are progressing under her care. There is no doubt that the petitioner can offer the infants not only the best education money can buy, but also guidance with a high likelihood of ensuring that the two infants grow to be self-sufficient adults.

**(d) Factor 5: The emotional ties and relationships to be established between the child and his or her prospective adoptive parents, siblings, family and household members, or other caregivers.**

22. Before I can grant an order of adoption, I must also be satisfied that the petitioners children, her family and care givers are ready to welcome the infants into the household. Any rejection experienced by the infants in their new home would be traumatic and highly damaging. The petitioner gave evidence of how the two other children in the home have welcomed the idea on new additions to the family. She showed the Court a home video of the two older siblings exuberantly welcoming their prospective twin sisters into their home. The Adoption Home Study Report prepared in her country also gives independent confirmation of the enthusiasm shared by these two at the prospect of having younger sisters.

23. The petitioner's two older biological children who no longer live in the home are also reported as being very supportive to their mother in the previous adoptions and share a healthy sibling relationship with the two younger adopted children. The petitioner's



oldest

child has a tattoo of her younger sister's name and plans to be an emotional support to her mother throughout the current adoption process. The younger of the older children has demonstrated his support in the past by travelling with his mother to Malawi for an important cultural ceremony held for his younger brother. The two older children have therefore stood by their mother and siblings in the past and there is every indication that they will to similar lengths to form a loving relationship with the two infants.

24. The petitioner's extended family are equally on-board with the adoption and one of her sister's and her husband have executed a declaration of their willingness to step in as guardian of the two infants should anything happen to the petitioner. Both the adults who assist the petitioner in her home are also equally enthusiastic about their role in their lives and one has traveled with the petitioner and is already bonding with the infants. This assurance is very important in cases of single parent adoptions which require the court to ensure that the petitioner has support in her parenting role.
25. The petitioner has therefore adequately satisfied me that there are indeed emotional ties between the infants and the prospective adoptive family. I am satisfied that there is a sound basis for the development of relationships between the infants and family members and friends who provided references for the Court's consideration in this adoption who are a readymade support network for the petitioner. I have no doubts, therefore, that the infants shall be accepted and readily assimilated into their new life with the petitioner.

**(e) Factors 6 and 7: The capacity of the prospective adoptive parent to provide adequate food, clothing, and medical care and the mental and physical health needs of the child.**

26. The Adoption Home Study Report documents the petitioner's employment and finances which have been verified by a Certified Public Accountant and her tax returns. Befitting the petitioner's status, her finances are more than adequate to enable her to provide for additions in the number of her children and the twin infants in this matter shall be adequately taken care of in all respects. The petitioner has a full-time network of

assistants

who are available to attend to any emergency should she be engaged in her professional or charitable work away from the infants.

**Factor 8: The mental and physical health of the prospective adoptive parent.**

27. Parenting is full time work and parenting young twins in a house hold with other children ordinarily poses a challenge. The Court must therefore be satisfied that the petitioner being fully aware of the challenges presented to her as a single parent in such a role has the physical and mental capacity to undertake it. As I stated ***In the Matter of the Adoption of Children Act and in the matter of P.S.*** (cited above),

*“Whilst the mental and physical health needs of the infant are very important in an adoption application, the mental and physical health needs of the prospective adoptive parents are equally as important. If the mental and physical health of such parents is in any way compromised, their parenting abilities are affected and exposing a child to such a situation would not be in his best interests.”*

The Adoption Home Study Report records that the petitioner meets and exceeds the needs of health and physical fitness required for this adoption. This is very important considering that the petitioner is above the age normally considered within the ranges of parenting. She was examined by her doctor on October 17, 2016 and according to the statement prepared by her doctor does not have any medical diagnoses and is not prescribed any medication. With such a clean bill of health and demonstrated vigour, I find no reason why she should not be able to parent the two infants.

**The importance of timely permanence decisions**

28. The last factor I shall be considering has often been misunderstood to mean a court, after hearing an adoption matter, must produce a decision within a very short period of time. Whilst it is indeed desirable that decisions are made expeditiously, what this factor entails in as far as it is applied to adoption matters is that a decision which introduces permanency in the life of an infant who is either in foster care or institutional care or not subject to any care order and is lacking in care, should be made at the earliest opportune time in the infant's life. It is in reference to the stage in the child's life at which the decision is made that timeliness required. This requirement therefore places a

duty on all actors or

stakeholders in the child protection system to identify children in need of care and protection at the earliest possible opportunity and make a decision as to how the children shall be taken care of in the long run so as to avoid them overstaying in foster care or institutional care which *inter alia* does not give the children a sense of belonging or permanency.

29. Therefore, to reiterate, timeliness is not about the speed of the process nor should it subject the Court to the unnecessary pressure of making a decision within hours of the adoption hearing. If I may borrow from the wisdom of Judge Leonel Edwards (retired)<sup>2</sup>, “*timely permanency can be achieved.[ T]hrough a combination of judicial leadership and implementation of best practices.*” As a jurisdiction, Malawi is still developing its jurisprudence on inter-country adoption and in the pursuit of establishing best practices, I wish to reiterate the position taken ***In the Matter of the Adoption of Children Act and in the Matter of N.M.B. (a male infant)*** Adoption Cause No. 11 of 2012 LL. H.C. (unreported) as follows:

*Whilst it is noted that prospective adoptive parents that come into the country are either employed or are in business in their own countries and thus can only be in the country for a short period of time in consideration of their terms of employment or pressing business needs, they must, if they are serious about becoming parents, plan their time well so that they leave a fair amount of time open for their stay in the country. Three to four days between the hearing of the application and the scheduled departure of the applicants is by no means realistic and is in fact a mockery of the court process and the weight that is to be attached to a matter of such profound and lasting effects. There is no such thing as a “straight forward” adoption application as the life of a child is involved. Adoption applicants should therefore plan their time well and make room for a reasonable length of time to be spent in the country or at the very least ensure that their travel plans are open and can be changed to ensure that justice, which is in the best interests of the child, is done. It would not be in the best interests of the child to rush through an application and grant an application when the court has not performed all necessary checks to ensure that the*

<sup>2</sup>“Achieving Permanency by Front Loading the Child Protection System” Article appearing in the Judges Page Newsletter, July 2008; available at [http://www.casaforchildren.org/atf/cf/%7B9928CF18-EDE9-4AEB-9B1B-3FAA416A6C7B%7D/0806\\_judges\\_page\\_newsletter\\_0119.pdf](http://www.casaforchildren.org/atf/cf/%7B9928CF18-EDE9-4AEB-9B1B-3FAA416A6C7B%7D/0806_judges_page_newsletter_0119.pdf) visited 27 January 2016

*child will in fact be adequately cared for by competent parents who do not pose a threat to any aspect of the child's well-being. The only way for the court to assess whether the applicants before it are bona fide prospective parents or unscrupulous or incompetent persons who pose a threat to the child's well-being is to perform a careful examination and analysis of all the facts before it. The court will therefore not be forced to make a hurried decision simply to pander to the whims of particular applicants.*

Therefore, in making a decision in any adoption matter the court must exercise leadership in enforcing best practices to ensure that it takes “sufficient time to come up with a reasoned determination of commensurate weight with its impact on the life of the infant before it. This entails turning every stone in the petitioners’ lives and circumstances to ensure that the match between them and the infant will be for life” (***In the of the Adoption of Children Act and in Matter of H.J.(a male infant)*** Adoption cause No. 5 of 2015 LL. H.C. (unreported), see also ***In the of the Adoption of Children Act and in Matter of A.B. (a male infant)*** Adoption Cause No. 13 of 2015 LL. H.C. (unreported), ***In the of the Adoption of Children Act and in the Matter of D.K. (a female infant)*** Adoption Cause No. 14 of 2015 LL. H.C. (unreported), ***In the of the Adoption of Children Act and in the Matter of C.C. (a male infant)*** Adoption Cause No. 16 of 2015 LL. H.C. (unreported)). The Court has therefore endeavored to protect the sanctity of the judicial decision making process and the integrity of petitioners who come before it by submitting all prospective adoptive parents to a process that enables careful and sober scrutiny bearing in mind that each infant that comes before a court is unique.

30. I have considered section 7 of the Adoption of Children Act which empowers a court to grant an interim order as opposed to a final order of adoption in appropriate circumstances. However, as I reasoned ***In the Matter of P.S.*** (cited above), interim orders are appropriate where it is necessary,

*“to give additional powers to the court where all the necessary matters have been dealt with at a substantial hearing of the adoption application, ... but there is still some doubt about the wisdom of making the final and conclusive adoption order.”*

(Butler-Sloss LJ in **Re C and F (Adoption: Removal Notice)**, [1997] 1 FLR 190, CA at

195. See also **Re AW (Adoption Application)** [1993] 1FLR 62.) The time this Court has



taken to come up with this determination has ensured that all matters that were presented for its consideration during the hearing have been considered and there is no outstanding matter that would require more reports or evidence.

31. I had also considered ordering a further report on the progress of the children in a years' time, but the practical effect of the enforcement of such an order considering that Malawi is not a signatory to The Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption would be difficult. I am therefore entreating the petitioner to facilitate another Home Study Report within a year with the purpose that should there be any problems experienced they will be highlighted to the relevant authorities and further that she shall be given all the support necessary to strengthen her in her parenting role. With her demonstrated cooperation during these proceedings and her commitment to proper parenting, I have no doubt that she will comply and provide this Court with a copy for the sake of completeness of record.

32. Thus, returning to factor under consideration, namely the importance of making timely permanence decisions, the twins' infants in this matter are still very young. They have their best lives ahead of them. It is extremely rare in for twins to be placed together as most prospective adoptive parents cannot undertake the responsibility of two infants as in the present case. As has been argued before me, separation negatively impacts the development of twins and keeping them together can only be in their best interests. In the matter before me an opportunity has arisen at an opportune point in the infants' lives for the introduction of family integrity and permanence by a petitioner who has satisfied me that their adoption by her would be in their best interests.

### **Order**

33. For all I have reasoned above, I hereby grant the following orders:

- (a) An order to the petitioner, Miss M.L.C. for the adoption of E.M., a female infant.
- (b) An order to the petitioner, Miss M.L.C. for the adoption of S.M., a female infant.

34. I also direct that the Director of the National Registration Bureau shall make an entry recording these two adoptions in The Adopted Children Register in the form set out in the

schedule to the relevant Act.

35. All costs of the petition shall be borne and paid by the petitioner.

I so order.

**MADE** in Chambers in Lilongwe in the Republic of Malawi this 7<sup>th</sup> day of **February 2017**.

A handwritten signature in blue ink, appearing to read 'Fiona Atupele Mwale', is written over a horizontal line.

Fiona Atupele Mwale  
**JUDGE**

*The judgment is being distributed on the strict understanding that in any report no person other than the advocates (and other persons identified by name in the judgment itself) may be identified by name or location and that in particular the anonymity of the children and the adult members of their family must be strictly preserved.*