



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**ADOPTION CAUSE NO. 163 OF 2016**

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

**AND**

**IN THE MATTER OF THE ADOPTION OF**

**BABY E.M.....MINOR**

**BY**

**C N.....1<sup>ST</sup> APPLICANT**

**AND**

**E N N.....2<sup>ND</sup> APPLICANT**

**JUDGMENT**

The Applicants, CN and ENN sought by their Originating Summons and Affidavit in support, orders allowing them to adopt Baby E.M (hereinafter the child) whose name they want changed to MRN. The Applicants are husband and wife. They are 52 and 53 years old respectively. They celebrated their marriage on 7<sup>th</sup> July, 1990 as per the marriage certificate filed herein marked CNN-10. The 1<sup>st</sup> applicant is a businessman while the 2<sup>nd</sup> applicant runs their family company, Acorn Special Tutorials, which deals with persons with special needs. They have been blessed with four children of their own. The child has special needs and since the applicants have a company that interacts a lot with people with special needs, they decided to adopt her to take care of her and provide her a home.

The child in this matter is presumed to have been born on 24<sup>th</sup> June, 2013. She was found abandoned in Mathare Bonde area in Nairobi on 28<sup>th</sup> June 2013 by good Samaritans. This matter was reported at Pangani Police Station and recorded vide O.B number 71/28/6/2013. The child was then placed at Zaidi ya Dreams Children's Family for temporary care and protection on 28<sup>th</sup> June 2013. The child was transferred from Zaidi ya Dreams Children's Family to Thomas Barnardo House on 30<sup>th</sup> April, 2015. The child was formally committed to Thomas Barnardo House on 15<sup>th</sup> May, 2015 for care and protection in accordance with **Section 119** of the **Children Act 2001** vide **Nairobi Protection and Care case number 115 of 2015**.

The child was then placed in the custody of the Applicants for mandatory bonding prior to adoption on 28<sup>th</sup> May, 2015. She has since then been in their continuous custody and care. According to correspondence from relevant police authorities at Pangani Police Station, and according to the statements of the good Samaritans, no one has come forward to claim the child. Kenya Children's Home Adoption Society issued a certificate declaring the child free for adoption pursuant to **Section 156(1)** of the **Children Act**. The said freeing certificate is serial no. 1261 and the same is dated 20<sup>th</sup> May, 2015.

In an application filed on 20<sup>th</sup> December, 2016 the Applicants sought orders that PDW be appointed as the child's guardian *ad litem*, and that the Director of Children's Services be ordered to investigate the suitability of the Applicants to adopt the child and submit a report. On 23<sup>rd</sup> February, 2017 this Court issued an order appointing PDW as the child's guardian *ad litem*, and further directing that he and the Director of Children's Services file their respective reports in Court. Certificate declaring a child free for Adoption No. 1261 was issued on 20<sup>th</sup> May, 2015.

Before this matter came up for hearing, Kenya Children's Home on 22<sup>nd</sup> February, 2017 filed a report which favoured the proposed adoption of the child by the Applicants. On 22<sup>nd</sup> January, 2018, the guardian *ad litem* filed a report which favoured the proposed adoption of the child

by the Applicants. Another report in respect of the proposed adoption of the child by the Applicants was prepared by the Director of Children's Services and filed on 8<sup>th</sup> February, 2018. This report was similarly in favor of the proposed adoption. Both reports filed in respect of this proposed adoption have recommended that this Court allows the Applicants to adopt the child.

This is a local adoption. It is evident that the Applicants have fulfilled all the legal requirements relative to the adoption of the child. The consents of the biological parents of the child are dispensed with in accordance to **Section 159(1) (a) of the Children Act, 2001** since the child was abandoned at birth. This Court is satisfied that the Applicants are qualified and able to take care of the child. The home visit by the guardian *ad litem* confirms that the Applicants are indeed capable of providing for the child. The Report from the Department of the Children's Services established that the Applicants have the financial and emotional capability to provide for the upkeep and education of the child. They both have no criminal records and are of good health. The child has bonded well with the Applicants according to the Guardian *ad litem*'s report. The child considers the Applicants her parents.

After careful examination of the documents presented, it is the opinion of the court that this Adoption would be in the best interest of the child. Hence, this Court allows the Applicants' application. The Applicants, CN and ENN, are hereby allowed to adopt Baby E.M. Henceforth, the child shall be known as MRN. Her date of birth shall be 24<sup>th</sup> June, 2013. Her place of birth shall be Nairobi County. She is presumed to be a citizen of Kenya by birth. KWN is hereby appointed as the legal guardian of the child should any eventuality arise. This Court directs the Registrar General to duly enter this order in the Adoption Children Register. The guardian *ad litem* is hereby discharged. It is so ordered.

**DATED, SIGNED AND DELIVERED THIS 24<sup>TH</sup> DAY OF SEPTEMBER 2018.**

**M. W. MUIGAI**

**JUDGE- FAMILY DIVISION HIGH COURT**

**IN THE PRESENCE OF;**

**MS KIGUATHA FOR THE APPLICANTS**