



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**ADOPTION CAUSE NO. 172 OF 2015 (O.S)**  
**IN THE MATTER OF BABY E M**  
**AND**  
**IN THE MATTER OF CHILDREN'S ACT (NO.8 OF 2001)**  
**AND**  
**IN THE MATTER OF AN APPLICATION FOR ADOPTION BY J M N AND S K M**  
**(APPLICANTS)**  
**JUDGMENT**

1. Pursuant to Sections 154, 159, 164 and 170 of the Children's Act 2001 and Legal Notice No. 75/2002, the applicants herein J N M and S K M filed an application by way of Originating Summons dated 18<sup>th</sup> June 2015 and filed on 1<sup>st</sup> July 2015 seeking orders as hereunder:

- a) That the applicants J N M and S K M be authorized to adopt Baby E M and that the child henceforth be called E M M**
- b) That S K M be appointed legal guardian of the child in the event a misfortune befalls the applicants rendering them unavailable or incapable of taking care of the child.**
- c) That the registrar general be ordered to make the appropriate entries in the adopted children's register in respect of E M M.**
- d) That the child was born in Kenya of Kenyan parents and is therefore a Kenyan by birth and is entitled to Kenyan passport.**

2. Application is predicated upon grounds on the face of it and a joint statement in support duly signed by the applicants. Vide Chamber Summons dated 18<sup>th</sup> June 2015 but filed on 1<sup>st</sup> July 2015, the applicants sought appointment of J M M as guardian ad litem pursuant to the provisions of Section 160 of the Children's Act 2001. Upon considering the affidavit in support deposed jointly by the applicants on 18<sup>th</sup> June 2015, proposed guardian ad litem's consent and affidavit sworn on the 18<sup>th</sup> June 2015 and further, considering the affidavit of fitness sworn on the same date by S K G, the court granted the orders on 6<sup>th</sup> November, 2015 thereby appointing the said J M M as guardian ad litem.

3. The applicants herein who are husband and wife are engaged in a monogamous marriage celebrated

under the African Christian Marriage and Divorce Act Cap 151 on 10<sup>th</sup> September 1994 while aged 34 and 32 years respectively. They are Kenyan citizens blessed with one biological son F N M born 7<sup>th</sup> May 1996.

4. Their motivation and desire to adopt the baby herein is the need to have another child in order to expand their family bearing in mind that every effort to get more children has borne no fruit due to medical challenges following three miscarriages. Secondly, their only biological son F has a special condition known as Downs Syndrome thus impairing his speech hence longs for a sibling with whom he can communicate albeit by gestures.

5. The couple is endowed with resources with the 1<sup>st</sup> applicant operating matatu business among them 3 buses generating a monthly income of 265,000 per month. The second respondent is working as a teller at [particulars withheld] Bank earning a monthly salary of 35,000. From the social, moral and spiritual perspective, the applicants are Christians worshipping at [particulars withheld] Milimani with no criminal record, they live in two bed-roomed house within Pangani Estate, are mentally and medically fit.

6. The minor herein who is the subject of this adoption proceedings estimated to have been born on 26<sup>th</sup> February 2012 was rescued by a good Samaritan after being abandoned within Kayole estate Nairobi County on the 23<sup>rd</sup> April 2012.

7. The incident was immediately reported at Kayole Police Station vide OB No. [particulars withheld] and through the Children Officer's intervention, the child was referred and admitted at Imani Children's Home for care and protection. On 5<sup>th</sup> October 2012, he was formally committed to the said children's home by Nairobi Children's court vide Protection and Care Case No. 432/2012 for a period of 3 years.

8. Every effort made to trace the minor's parents and or relatives through the Children department and the police as evidenced by their letter dated 2<sup>nd</sup> May 2012 and final letter dated 3<sup>rd</sup> July 2014 have not been positive as nobody has ever presented any claim over the child. During a placement case committee meeting held by Little Angels on 30<sup>th</sup> July 2017, the baby was declared free for adoption vide a certificate S/No. [particulars withheld] after three months consecutive mandatory bonding period.

9. Prior to the hearing, various stakeholders among them the Director Children Services, Little Angels Adoption Society and their guardian ad litem filed their respective assessment reports dated 20<sup>th</sup> March 2017, 7<sup>th</sup> August 2014 and 17<sup>th</sup> March 2017 respectively recommending the adoption. During the hearing, the applicants pleaded with the court to allow their application contending that they had understood the consequences of the adoption.

10. I have considered the summons herein, materials placed before court and testimony by the applicants. Issues for determination are:

(a) Is the baby herein available for adoption;

(b) Have the applicants met requisite requirements for adoption.

11. In answer to issue No. 1, Section 157(1) of the Children Act comes to play in so far as it provides:

**“Any child who is resident within Kenya may be adopted whether or not the child is a Kenyan citizen, or was or was not born in Kenya. Provided that no application for adoption order, shall be made in respect of a child unless the child concerned has been in continuous care and control of the applicant within the republic for a period of three consecutive months preceding the filing of the application and both the child and the applicant or applicants as the case may be evaluated and assessed by a registered adoption society in Kenya”.**

12. In this case, the minor was abandoned at Kayole area within the republic of Kenya. The minor then

aged less than two months is properly covered under Section 157 of the Children Act and Article 14 (4) of the Constitution which provides that any child aged less than 8 years whose parents or nationality is not known is presumed to be a Kenyan citizen by birth. The minor herein who has been in the continuous care and control of the applicants for more than three months since placement for purposes of bonding, is available for adoption. Equally, in compliance with Section 159(1) of the Children's Act, consent is dispensed with considering that nobody has laid claim over the child.

13. As regards issue number two, both applicants are Kenyan citizens and have been in continuous care and control of the child for more than three months preceding this application. The applicants have been duly assessed by various mandatory stake holders who stated that the applicants are; socially, morally, economically, medically, emotionally and psychologically suitable and therefore qualified to adopt the baby.

14. The applicants own properties among them three buses, a car, three plots and 3 acres of land besides the second applicant's working as teller at Fina Bank with a combined monthly income of about 300,000/=. They are staying in a two-bedroomed house within Pangani estate hence a conducive environment for child development and growth. With such economic base, the child's best interest in terms of education, shelter, clothing, food, medical cover which is already operational, spiritual and moral wellbeing is assured and guaranteed.

15. The court is alive to the fact that, in considering application of this nature, the paramount factor to take into account is the best interests of a child as enshrined in Article 52 (2) of the Constitution and Sections 4 (2) and (3) of the Children's Act.

16. The applicants have fully bonded with the child a fact that was evident and manifestly exhibited in court by the closeness with which the child clung to both adoptive parents. The first applicant is aged 57 years old and the second applicant 55 years old which age is well within the statutory age bracket of between 25 years and 65 years in accordance with Section 158(1) of the Children Act.

17. From their testimony and the stakeholders' reports, the child herein has been accepted by both the applicants, their relatives and family friends. The child who has fully bonded with the entire family is comfortable and well taken care of like their biological child.

18. This being a local adoption, I am satisfied that the applicants have satisfied the court that they have met the requisite requirements and therefore in the best interests of the child, the application is hereby allowed with orders as follows:

**a) That the applicants J N M and S K M be and are hereby authorized to adopt Baby E M and the child shall henceforth be called E M M.**

**b) That the date of birth shall be presumed to be 26<sup>th</sup> February 2012 and his place of birth shall be Kayole in Nairobi County within the Republic of Kenya.**

**c) That the registrar general is directed to enter and register the said child in the adoption register.**

**d) That the director Immigration do issue the minor with a Kenyan passport.**

**e) That the guardian ad litem herein is hereby discharged.**

**f) That S K M a niece to the second applicant be and is hereby appointed as legal guardian in the event of any misfortunate, incapacitation or death of the applicants.**

**SIGNED, DATED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 8<sup>TH</sup> DAY OF DECEMBER, 2017.**

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**J. N. ONYIEGO,**

**JUDGE**

**In the presence of:**

.....Counsel for the Applicant

.....Court Administrator