



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**FAMILY DIVISION**  
**ADOPTION CAUSE NO.215 OF 2014 (O.S)**

**IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001**

**AND**

**IN THE MATTER OF BABY P.H. (CHILD)**

**AND**

**IN THE MATTER OF AN APPLICATION FOR ADOPTION BY**

**M M W.....1<sup>ST</sup> APPLICANT**

**J W M.....2<sup>ND</sup> APPLICANT**

**JUDGMENT**

1. The applicants are a married Kenyan couple with two biological children aged 20 and 16 years. The 1st applicant is a businessman while the 2<sup>nd</sup> applicant is a pastor. They filed originating Summons dated 10<sup>th</sup> September 2014 seeking to be allowed to adopt Baby P.H. who is estimated to have been born on or about 22<sup>nd</sup> July 2013. The child was reported to have been found abandoned within St. Paul's primary School compound in Mbotela estate in Nairobi on 23<sup>rd</sup> July 2013 by pupils at the school who informed their head teacher and the deputy head teacher. The child was rescued and the incident reported at Makongeni Police Station where it was recorded under O.B No.15/23/7/2013. The matter was referred to the Makadara Sub-County Children's Department who secured a vacancy at Hope House Children's Home where the child was admitted on the same day. He was formally committed to the said home on 20/09/2013 by the Resident Magistrate's Court at Makadara vide Protection and Care case number 86 of 2013. The Police in their final letter dated 29<sup>th</sup> January 2014 reported that no one had come forth to claim the child and neither had they succeeded in tracing the child's biological parents or relatives. Hope House Children's Home also reported that no one had come forth to claim the child during his stay at the home. The child was declared free for adoption in accordance with **section 156** of the **Children Act** by the Little Angels Network Adoption Society on 26<sup>th</sup> February 2014 and freeing certificate No.[*particulars withheld*] issued. He had however been placed under the care of the applicants on 27<sup>th</sup> January 2014 for mandatory bonding prior to adoption. He has been under the applicants' continuous care to date. It is noted that this placement before the child was declared free for

adoption goes against the provisions of **section 156 (1)** of the Act.

2. This court on 10th Nov 2014 appointed F M G as guardian *ad litem* and ordered that she together with the Director of Children Services do file their requisite reports. Both reports were duly filed recommending that the applicants be allowed to adopt the child as both are socially, emotionally and financially stable and that the child has bonded well with them as well as with their two biological children.
3. This court is of the opinion that it is in the best interests of the child to be adopted by the applicants. The applicants have demonstrated their ability to provide a conducive home and family environment to enable the child grow and develop. They shall assume all parental rights and duties of the biological parents of the child, once adopted and shall treat the child as if he was born to them. They have been made aware that once the adoption order is made, it shall be final and binding during the lifetime of the child, and that the child shall have the right to inherit their property. The applicants shall not be able to give up the child owing to any subsequent unforeseen behaviour or other changes in the child. This court dispenses with the consent of the child's biological parents as the child was found abandoned. Despite the breach of **section 156(1)** of the **Act**, I find that the adoption will serve the best interests of this child.
4. Having been satisfied that all the legal requirements for a local adoption under the **Children Act** have been met, the following orders shall issue:-
  - a. the applicants M M W and J W M are hereby allowed to adopt baby P.H. who shall henceforth be known as I J M;
  - b. the child's date of birth shall be 22<sup>nd</sup> July 2013, and shall be presumed Kenyan by birth having been abandoned at Mbotela in Nairobi within Kenya;
  - c. that J K and E N are hereby appointed as legal guardians to the child in the event of death or incapacity of the applicants before he is of full age and fully self-reliant;
  - d. the Registrar-General is directed to enter this adoption in the Adopted Children Register;
  - e. the Director of Immigration Services is hereby ordered to issue I J M with a Kenyan Passport; and
  - f. the guardian *ad litem* is hereby discharged

**DATED at NAIROBI this 28<sup>TH</sup> JANUARY 2016**

**A.O. MUCHELULE**

**JUDGE**

**DELIVERED at NAIROBI this 29<sup>TH</sup> JANUARY 2016**

**W. MUSYOKA**

**JUDGE**