



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**ADOPTION CAUSE NO. 207 OF 2014**

**IN THE MATTER OF THE CHILDREN ACT**

**AND**

**IN THE MATTER OF BABY N M alias N M (MINOR)**

**E M R .....1<sup>ST</sup> APPLICANT**

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

**JUDGMENT**

The Applicants, E M R (“the 1<sup>st</sup> Applicant”) and G N (“the 2<sup>nd</sup> Applicant”), seek by their application to be allowed by this Court to adopt Baby N M alias N M (hereafter “the child”). The Applicants are husband and wife. They celebrated their marriage on 28<sup>th</sup> August 2004 under the **African Christian Marriage and Divorce Act** (*now repealed*). They are business persons. Both Applicants reside in [Particulars Withheld] Estate within Nairobi County. Their marriage has been blessed with one child, a son born on 22<sup>nd</sup> December 2012. Attempts by the Applicants to sire another child have been unsuccessful due to medical reasons. They therefore want to expand their family through adoption.

The child who is the subject of the present adoption was found abandoned on 7<sup>th</sup> May 2013 at [Particulars Withheld] in Kimende within Lari District. She was presumed to have been born on the same day. A report on the matter of the abandoned child was made at Kimende Police Post on the same day and the same was recorded vide OB No. 17/7/5/2013. The child was referred to Tigoni District Hospital for medical attention. She was admitted at the hospital’s new born unit on 8<sup>th</sup> May 2013. The Limuru District Children Office was informed of the incident and managed to secure a temporary placement for the child at Limuru Children’s Centre. The child was discharged from Tigoni District Hospital on 30<sup>th</sup> May 2013 and was admitted at Limuru Children’s Centre on 3<sup>rd</sup> June 2016. The Senior Resident Magistrate Children’s Court sitting at Limuru, in accordance with **Section 119** of the **Children Act**, committed the child to the said children’s home on 5<sup>th</sup> June 2013 vide **P&C No. 22/2013**. The child was placed in the custody of the Applicants on 5<sup>th</sup> March 2014 for mandatory bonding prior to adoption. The child has since then been in the continuous custody and care of the Applicants. According to correspondence from relevant police authorities at Kimende Police Post, no one has come forward to claim the child. A report to that effect dated 29<sup>th</sup> November 2013 has been filed in Court. Thus, this Court dispenses with the consent of the child’s biological parents to the proposed adoption of the child by the Applicants. The 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 no. 1043 and the same is dated 12<sup>th</sup> February 2014.

In an application filed on 14<sup>th</sup> September 2014, the Applicants sought among others, orders from this Court that L M K 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. The Applicants also sought to have the Court appoint M G K and P N M as the child’s legal guardians. They further sought for an order that upon adoption the child be known as N M. On 17<sup>th</sup> October 2014, this Court issued an order appointing L M K as the child’s guardian ad litem, and further directing the guardian ad litem and the Director of Children’s Services to file their respective reports in Court.

Pursuant to **Section 156(1)** of the **Children Act**, before this matter came up for hearing, the Kenya Children’s Home Adoption Society prepared and filed in Court a favourable report in respect of the proposed adoption of the child by both 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 this report was similarly in favour of the proposed adoption. The guardian ad litem, L M K, also filed the statutory report made under **Section 160(2)** of the **Children Act** in which she noted that the proposed adoption of the child by the Applicants would be in the best interests of the child.

All the statutory reports that have been filed in respect of the proposed adoption of the child by the Applicants have recommended that this Court allows the joint Applicants to adopt the child. This Court has evaluated the facts of this adoption. 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 consent of the biological parents of the child was dispensed with since the child was abandoned at birth, and her biological parents could not be traced to give their consent. This Court has satisfied itself 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 and emotional capability to provide for the upkeep and education of the child. This Court observed the Applicants with the child in Court and 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 to be her parents.

On the basis of a careful examination of the documents presented before me as well as the observations made therein, this Court has formed the opinion that it would be in the best interest of the child to be adopted by the Applicants. Hence, this Court allows the Applicants’ application. The Applicants, E M R and G N, are hereby allowed to adopt Baby N M alias N M. Henceforth, the child shall be known as N M. Her date of birth shall be 7<sup>th</sup> May 2013. Her place of birth shall be Limuru District. She is presumed to be a citizen of Kenya by birth. M G K and P N M, the brother and sister in law respectively of the 1<sup>st</sup> Applicant shall be the legal guardians of the child should such eventuality arise. This Court directs the Registrar General to duly enter this order in the Adoption Register. The guardian ad litem is hereby discharged. It is so ordered.

**DELIVERED AND SIGNED IN OPEN COURT AT NAIROBI THIS 29<sup>TH</sup> DAY OF FEBRUARY, 2016**

**M.W. MUIGAI**

**JUDGE**

***In the presence of:***

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