



**REPUBLIC OF KENYA**

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

**ADOPTION CAUSE NO. 109 OF 2014**

**IN THE MATTER OF THE CHILDREN ACT**

**AND**

**IN THE MATTER OF BABY P M alias Z**

**S G I .....1<sup>ST</sup> APPLICANT**

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

**JUDGMENT**

The Applicants, S G I (“the 1<sup>st</sup> Applicant”) and M W M (“the 2<sup>nd</sup> Applicant”), seek by their application to be allowed by this Court to adopt Baby P M alias Z (hereafter “the child”). The Applicants are husband and wife. They celebrated their marriage on 2<sup>nd</sup> April 2013 at the Office of the Registrar in Nairobi. The 1<sup>st</sup> Applicant is currently employed by [*particulars withheld*] as a Service Technician while the 2<sup>nd</sup> Applicant is a [*particulars withheld*]. Both Applicants live together in Saika Estate within Nairobi County. Their marriage has not been blessed with any children due to medical reasons. Thus, they wish to adopt a child.

The child who is the subject of the present adoption proceedings was born on 14<sup>th</sup> July 2012 at Thika Level 5 Hospital. She was abandoned on 15<sup>th</sup> July 2012 by her biological mother whose name was given out as P M after she absconded from the hospital. A report on the matter of the abandoned child was made at Thika Police Station and the same was recorded vide OB No. 43 23/7/2012. The child was thereafter transferred to Thomas Barnardo House on 8<sup>th</sup> August 2012 for care and protection, and this is evidenced by the child’s admission form into the said home.

The Senior Resident Magistrate Children's Court sitting at Thika, in accordance with **Section 119** of the **Children Act**, committed the child to Thomas Barnardo House on 8<sup>th</sup> August 2012 vide **P&C No 137/2012**. The child was placed in the custody of the Applicants on 7<sup>th</sup> May 2013 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 in Thika, no one has come forward to claim the child. A report to that effect 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. Kenya Children’s Homes, an 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. 0949 and the same is dated 17<sup>th</sup> April 2014.

In an application filed on 24<sup>th</sup> April 2014, the Applicants sought among others, orders from this Court that Ann Wangari Kamanu 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. They further sought for an order that upon adoption the child be known as H C G. On 3<sup>rd</sup> October 2014, this Court issued an order appointing Ann Wangari Kamanu 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, Kenya Children's Homes, the relevant 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, Ann Wangari Kamanu, 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 his 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, S G I and M W M, are hereby allowed to adopt Baby P M alias Z. Henceforth, the child shall be known as H C G. Her date of birth shall be 14<sup>th</sup> July 2012. Her place of birth shall be Thika Level 5 Hospital. She is presumed to be a citizen of Kenya by birth. **Susan Wanjiru Iregi Kamanu** shall be the legal guardian 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 15<sup>TH</sup> DAY OF FEBRUARY, 2016**

**M.W. MUIGAI**

**JUDGE**

*In presence of;*

*Mr. Ochieng holding brief for Mrs. Wambugu for the Applicant.*