



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ADOPTION CAUSE NO. 265 OF 2015
IN THE MATTER OF THE CHILDREN ACT
AND
IN THE MATTER OF BABY J W (MINOR)

B N K1ST APPLICANT

A M N2ND APPLICANT

JUDGMENT

The Applicants, B N K (“the 1st Applicant”) and A M N (“the 2nd Applicant”), seek by their application to be allowed by this Court to adopt Baby J W (hereafter “the child”). The Applicants are husband and wife having been married since 2nd April 1988 under the **African Christian Marriage and Divorce Act (now repealed)**. The 1st Applicant is a church minister while the 2nd Applicant is a business lady. Both Applicants live together within Nairobi County. Their marriage was blessed with one (1) child who however passed away at infancy. They have since not been able to have more children due to medical reasons. Thus, the Applicants entered into a surrogate motherhood agreement with T M K, the 2nd Applicant’s niece, who consented to act a surrogate mother by undergoing In Vitro Fertilization (IVF) whereby the 1st Applicant’s sperm was used.

The child who is the subject of the present adoption proceedings was born on 5th February 2013 at Kenyatta National Hospital from the surrogate mother. The 1st Applicant is therefore genetically related to the child. Following the birth of the child, she was issued with a birth certificate registering the 2nd Applicant as her biological mother. The child has been in the custody of the Applicants since birth. Subsequently, the Applicants applied for a British citizenship for the child but have had legal challenges trying to pursue the same. The issue that arose was whether the 2nd Applicant was rightly registered as the child’s biological mother. The Applicants therefore petitioned the court for directions on the issue. Responding to this challenge, Lenaola J. in his judgement delivered in **Nairobi High Court Petition No. 443 of 2014 in A.M.N & 2 Others –vs- The Attorney General & Others** held inter alia that the surrogate mother is presumed in law to be the mother of a surrogate child until other legal processes are applied to transfer legal motherhood to the intended mother. In accordance with the judgement of the court, the Applicants therefore filed these adoption proceedings.

T M K, the child’s legal mother has given her consent to the proposed adoption by the Applicant and she was present in Court. The child has also been declared free for adoption pursuant to **Section 156(1)** of

the **Children Act**, by the adoption society, KKPI. The said freeing certificate is no. [particulars withheld] and the same is dated 25th March 2015. In an application filed on 6th November 2015, the Applicants sought among others, orders from this Court that L M P be appointed as the child's guardian ad litem, and that the Director of Children 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 H N N , the 2nd Applicant's sister, as the child's legal guardian. They further sought for an order that upon adoption the child be known as G W N. On 4th December 2015, this Court issued an order appointing L M P as the child's guardian ad litem, and further directing the guardian ad litem and the Director of Children Services to file their respective reports in Court.

Pursuant to **Section 156(1)** of the **Children Act**, before this matter came up for hearing, KKPI, 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 Services, and this report was similarly in favour of the proposed adoption. The guardian ad litem, L MP, 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 mother of the child was obtained. 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, B N K and A M N, are hereby allowed to adopt Baby J W. Henceforth, the child shall be known as J W N. The date of birth shall be 5th February, 2013 and she is presumed to be Kenyan Citizen by birth. H N N, the 2nd Applicant's sister, 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.

DATED AT NAIROBI THIS 30TH DAY OF JUNE, 2016

M. W. MUIGAI

JUDGE

In presence of:-

Mr. Amalemba holding brief for Mr. Mwenda for the Applicants