

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 39 OF 2015

IN THE MATTER OF THE CHILDREN ACT, 2001

AND

IN THE MATTER OF BABY F W (MINOR)

DR. J B M1ST APPLICANT

A K M2ND APPLICANT

JUDGMENT

The Applicants, Dr. J B M (“the 1st Applicant”) and A K M (“the 2nd Applicant”), seek by their application to be allowed by this Court to adopt Baby F W (hereafter “the child”). The Applicants are husband and wife. They married under customary law and solemnized their marriage on 7th December 2002 at [particulars withheld] Catholic church in Nairobi under the **African Christian Marriage and Divorce Act (now repealed)**. The 1st Applicant is a medical doctor currently employed by [particulars withheld] while the 2nd Applicant is a Senior Nurse currently employed at [particulars withheld] Hospital. Both Applicants reside within Nairobi County. Their marriage has been blessed with two (2) biological children, a son, D N M born on 15th July 1996 and a daughter, V W M born on 25th March 2001. The Applicants are sympathetic to the needs of needy children and therefore wish to provide a home for a needy child. They also want to expand their family through adoption.

The child who is the subject of the present adoption proceedings was born on 4th July 2011 at Valley Hospital in Nakuru County. Her biological mother, M M W handed her over to Haven of Hope Baby Centre at birth since she was born out of her defilement by her stepfather. It is said that the child was placed at the said baby centre to secure her safety with the intent to later reintegrate her back to her biological family. The Children's Court sitting at Nakuru, in accordance with **Section 119** of the **Children Act**, committed the child to the said children's home on 5th July 2011 vide **P&C No 636/2011**. After undergoing several counselling sessions over one and a half years, the child's biological mother opted to offer the child for adoption. The consent of the biological mother of the child to the adoption was obtained on 18th December 2013. The child was placed in the custody of the Applicants on 12th May 2014 for mandatory bonding prior to adoption. The child has since then been in the continuous custody and care of the Applicants. The Adoption Society, Kenya Children's Homes issued a certificate declaring the child free for adoption pursuant to **Section 156(1)** of the **Children Act**. The said freeing certificate is no. [particulars withheld] and the same is dated 12th March 2014.

In an application filed on 6th February 2015, the Applicants sought among others, orders from this Court that J M N 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 the 2nd Applicant's sister B K and her husband L O W as the child's legal guardians. They further sought for an order that upon adoption the child be known as P M M. On 13th March 2015, this Court issued an order appointing J M N 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, J M N, also filed the statutory report made under **Section 160(2)** of the **Children Act** in which he 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 has been 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’s 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, Dr. J B M and A K M, are hereby allowed to adopt Baby F W. Henceforth, the child shall be known as P M M. The 2nd Applicant’s sister B K and her husband L O W 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.

DATED AT NAIROBI THIS 31ST DAY OF OCTOBER OF 2016

M.W MUIGAI

JUDGE

In the presence of:-

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