



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ADOPTION CAUSE NO. 162 OF 2015
IN THE MATTER OF THE CHILDREN ACT, 2001

AND

IN THE MATTER OF BABY J T

R N M.....1ST APPLICANT

G N M 2ND APPLICANT

JUDGMENT

INTRODUCTION

R N M and G N M (hereafter ‘the Applicants’) have filed an Originating Summons Application dated 16th June, 2015 in which they seek the following orders:

- (1) That the Applicants, R N M and G N M be and are hereby authorized to adopt baby J T, and the child be called E M N henceforth.***
- (2) That Mr. M M M and Mrs. J M M be and is hereby appointed legal guardians of the child in the event a misfortune befalls the Applicants rendering them unavailable or incapable of taking care of the child.***
- (3) That the Registrar General be and is hereby ordered to make the appropriate entries in the Adopted Children’s Register in respect of E M N.***
- (4) That the child was born in Kenya of Kenyan parents and is therefore a Kenyan by birth and is entitled to a Kenyan passport.***

THE APPLICANTS’ CASE

In their Written Statement dated 16th June, 2015, in support of the Application, the Applicants averred that they are both Kenyan citizens, residents in Nairobi and they got married on 9th September, 2014 and that they have not been blessed with any child unfortunately.

It was their statement that they are business persons and they are Christians. That they have no previous criminal records and they are both of general good health and do not in any way engage in narcotics or alcohol.

The Applicants also stated that they have sufficient family income to enable them take good care of the child and that in any event, they have not received or agreed to receive and no person has made or given or agreed to make to them any payment or reward in consideration of the present Application and furthermore, that they have never made any such Application in regard to the child.

DETERMINATION

Part XII of the **Children Act, 2001** prescribes the guidelines and threshold to be met by an Applicant in adoption Applications such as the present one. The instant Application is by a married couple and hence it is an Application lodged jointly as per the **Children Act** which at **Section 158 (1)** provides that:

An adoption order may be made upon the application of a sole applicant or jointly by two spouses where the applicant or at least one of the joint applicants-

(a) Has attained the age of twenty-five years and is at least twenty-one years older than the child but has not attained the age of sixty-five years; or

(b) Is a relative of the child; or

(c) Is the mother or father of the child.

Applying the **Children Act, 2001** to the present matter, it will be noted that the child herein was found abandoned at Kenyatta National Hospital. The matter was reported to Kenyatta Police Post where it was recorded as OB No. [particulars withheld]. Efforts to trace the child's parents bore no fruit and the child was committed to the legal custody of New Life Home Trust vide **Protection and Care Case No. 170 of 2014**. Since the incident was reported, no one has appeared claiming the child.

Furthermore, according to the final Report by the Kenyatta Police, dated 4th November, 2014, since the child was abandoned, nobody has since claimed parentage or raised any issue in regard to the child. As it stands therefore, the child is in need of alternative care and parental attention in a family environment.

Based on the material before the Court, the Applicants were assessed by the *guardian ad litem*, S O O, and Little Angels Network and were found to be suitable to adopt the child herein. According to the materials availed, the Applicants are financially and socially capable of providing for the child's needs.

The Little Angels Case Committee sitting on 29th October, 2014 assessed the Applicants' case and approved that the Applicants do adopt the child herein. Furthermore, the Committee found the Applicants suitable to adopt the child and issued a Certificate declaring the child free for adoption.

One, Mr. M M M and Mrs. J M M have both consented to being the child's legal guardian, as per their Letters of Consent at page 18 of the annexures in the Application herein, in the event that anything happens to the Applicants thereby rendering them unable to take care of the child.

According to the Children's Officer's Report of 18th May, 2016, the Applicants have fulfilled the legal requirements for adoption and have proved capable of taking on parental responsibility over the child in this matter during the statutory placement period prior to the adoption during which he has been under their continuous care and control. Further, they are physically and mentally fit and can be entrusted with the minor for adoption and they are financially capable of bringing up the minor as they both have stable sources of income. The Report further indicates that the child has bonded well with the Applicants and the home environment in which he is being raised in is conducive.

The Court finds that the Applicants have met the criteria of local adoptions and it would be in the child's best interest if he was adopted. The Court also notes that they are of good moral standing as evidenced by the Certificates of Good Conduct availed herein.

The Court therefore holds that the Applicants shall assume the responsibilities of parenthood and the child

shall be entitled to inherit from the property of the Applicants and furthermore, he shall not be given up because of any eventualities that might result.

In conclusion, the Court notes that it is in the best interest of the child herein that he be placed under the care and custody of the Applicants as he is going to have a home and a family with a secured future, with his education and wellbeing safeguarded. Accordingly, just as indicated in the Report by the Children's officer, the child in this matter is considered available for adoption having been abandoned by his mother immediately after birth, a sign that he had no room in the life of the natural parent. None of his relatives have so far claimed him and hence, the present adoption offers him the perfect alternative family.

DISPOSITION

The Applicants, R N M and G N M, are hereby authorized to adopt the child, A P. The child shall henceforth be known as E M N. He is therefore presumed to be a Kenyan Citizen by birth and thereby accorded all the entitlements of a Kenyan citizen. M M M and J M M are hereby appointed to be the legal guardians of the child should any misfortune befall the Applicants. The Registrar General is hereby directed to enter this order in the Adoption Register. The *guardian ad litem*, S O O, is hereby discharged. It is so ordered.

DATED, DELIVERED AND SIGNED ON THIS 13TH DAY OF DECEMBER, 2016

M. W. MUIGAI

JUDGE

In the presence of:

Jacqueline Mwaniki