



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**ADOPTION CAUSE NO. 198 OF 2015**  
**IN THE MATTER OF THE CHILDREN ACT, 2001**  
**AND**  
**IN THE MATTER OF K N (MINOR)**  
**J M M.....1<sup>ST</sup> APPLICANT**  
**J M M.....2<sup>ND</sup> APPLICANT**

**JUDGMENT**

**INTRODUCTION**

This is an Application for adoption by J M M and J M M (hereafter ‘the Applicants’) and through their Originating Summons dated 11<sup>th</sup> August, 2015 they seek the following orders:

1. *That the Applicants, J M M and J M M be and are hereby authorized to adopt baby K N; and the child be called K M M henceforth.*
2. *That G G G be and is hereby appointed legal guardian 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 K M M.*
4. *That the child was born in Kenya of Kenyan.*

**THE APPLICANTS’ CASE**

In their Statement in support of the Application, the Applicants stated that they are Kenyan citizens, they reside in Nairobi and they got married on 20<sup>th</sup> February, 1982 and they have been unable to get a child due to biological reasons.

It was their averment that the 1<sup>st</sup> Applicant is a businessman and the 2<sup>nd</sup> Applicant is a shopkeeper and they are both Christians.

It was their further contention that the minor is estimated to have been born on 3<sup>rd</sup> March, 2010 and he is a male Kenyan by birth and of African descent. Furthermore, that he was abandoned by his mother at Santon Day Care in Mwiki on 12<sup>th</sup> March, 2011.

The Applicants contended further that they took the minor into their foster care and custody on 29<sup>th</sup>

November, 2014 and it has since been in their custody and care. Further, that they have sufficient family income to enable them take good care of the child, and in any event, the minor has 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 proposed adoption and neither have they ever made any such an Application for adoption of the said minor before any Court.

### **DETERMINATION**

Have the Applicants made out a case to warrant the grant of the orders of adoption sought herein? The **Children Act 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.*

The Section further outlines other guidelines that should be followed by Courts in Applications such as the present one.

In the present case, the child was abandoned and the same was reported to Sunton Police Station vide OB. 19/13/03/2011 and hence as it stands, the child is in need of alternative care and parental attention in a family environment. The District Children's Officer of Kajiado North District, in her Report of 13<sup>th</sup> January, 2014, asserted that the child's mother has never resurfaced to claim her child nor has she been arrested and the child remained at Open Hand Children Home for a considerable length of time. In that regard, the Applicants, a married couple, are the only available family willing to foster care and nurture him.

Based on the material before the Court, the Applicants were assessed by the *guardian ad litem* and the Little Angels Network and were found to be suitable to adopt. According to the materials availed, the Applicants are financially and socially capable of providing for the child's needs. They have undergone medical evaluation and have been found to be of sound mind. They are persons of good conduct as evidenced by the Certificates of Good Conduct adduced to Court. The Little Angels Case Committee sitting on 28<sup>th</sup> May, 2014 assessed the Applicants' case and found them suitable to adopt the child and issued a Certificate declaring the child free for adoption. One, G G G, a relative to the Applicants, has consented to being the child's legal guardian, as per her Letter of Consent dated 24<sup>th</sup> February, 2014, in the event that anything happens to the Applicants.

According to the Children's Officer's Report of 13<sup>th</sup> April, 2016, the Applicants have fulfilled the legal requirements for adoption and they 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.

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 grants the orders that the Applicants shall assume the responsibilities of a parent to the child. The child shall be entitled to inherit from the property of the Applicants and shall not be given up because of any eventualities that might result.

### **DISPOSITION**

The Applicants, J M M and J M M are hereby authorized to adopt the child, K N. The child shall

henceforth be known as K M M. He is therefore presumed to be a Kenyan Citizen by birth. G G G is hereby appointed to be the legal guardian of the child should any misfortune befall the Applicant. The Registrar General is hereby directed to enter this order in the Adoption Register. The *guardian ad litem*, J M M, is hereby discharged. It is so ordered.

**DATED, DELIVERED AND SIGNED ON THIS 8<sup>TH</sup> DAY OF DECEMBER, 2016**

**M. W. MUIGAI**

**JUDGE**

**In the presence of:**

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