

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
ADOPTION CAUSE NO 278 OF 2014
IN THE MATTER OF THE CHILDREN ACT
AND
IN THE MATTER OF BABY S C

T M M.....1ST APPLICANT

R H.....2ND APPLICANT

JUDGMENT

Before me is an application for adoption by two joint Applicants: T M M, the 1st Applicant, and R H, W, the 2nd Applicant. The joint Applicants seek to be allowed by this Court to adopt Baby S C, hereafter “the child”. The 1st and 2nd Applicants are a married couple of Kenyan and Danish citizenship respectively. The Applicants have been living as man and wife since 2005 but they solemnized their union on 4th June 2011. The 1st Applicant is a humanitarian worker employed by the *[particulars withheld]* while the 2nd Applicant also works as a humanitarian worker employed by the *[particulars withheld]*. The Applicants’ marriage has thus far not been blessed with any biological children of the marriage. The Applicants’ marriage has thus far not been blessed with any biological children of their own, but there are two other children in the family. The first is R.M., an 18 year-old biological daughter of the 1st Applicant from a previous marriage and C.K.M.H, a 4 ½ year-old son jointly adopted by the Applicants. The Applicants have expressed an interest to adopt a child in order to provide their son with a sibling, and they seek by way of the present application achieve this.

The child who is the subject of the present adoption proceedings was born on 13th September 2013 at Mlolongo area. The child’s initial circumstance is that she was found abandoned by her biological mother C N in Mlolongo area, she was rescued by a Good Samaritan and she was subsequently referred to Lily of the Valley Rescue Centre, Mlolongo for protection and care. A report on the matter of the abandoned child was made to Mlolongo Police Station, where it was recorded vide OB No 8/13/9/2013. On the following day the child was transferred to Thomas Barnados Home before being transferred to Mahali Pa Maisha Home in Kitengela.

The Resident Magistrate Children's Court at Mavoko, in accordance with **Section 119** of the **Children Act**, committed the custody of the child to Mahali Pa Maisha home, Mlolongo on 15th January 2013 vide Protection and Care Case No 58/2013. The child was placed in the custody of the Applicants on 24th May 2014 for mandatory foster care prior to the adoption. The child has since then been in the continuous custody and care of the Applicants. According to correspondence from Mlolongo Police Station, the child’s biological mother was identified, arrested and charged with child neglect. By a letter dated 5th May 2014, the child’s biological mother formally offered the child for adoption citing severe financial difficulties and her circumstances that rendered her unable to provide for the child. The said letter is on the Court’s record. Thus, this Court is satisfied with the consent of the child’s biological parent to the proposed adoption by the Applicants. Kenya Children Homes Adoption Society issued a certificate declaring the child free for adoption pursuant to **Section 156(1)** of the **Children Act**. The said certificate is no. 1092 and the same is dated 21st May 2014.

The Applicants filed an application for adoption on 26th December 2014 seeking, among others, orders from this Court that J M T 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 on the same. The Applicants also sought to have the Court appoint Jacob Holm, brother to the 2nd Applicant, as the child's legal guardian and to order that upon adoption the child be known as N M M H. On 10th December 2014, this Court issued an order appointing J M T 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 T, 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 relevant facts of the Applicants' application for adoption. This is a local adoption of a Kenyan child by a Kenyan citizen and a Danish citizen. It is clear that the Applicants have fulfilled all the legal requirements pertinent to the adoption of the child. The consent of the child's biological mother was freely given for the child to be jointly adopted by the 1st Applicant and the 2nd Applicant. The consent of the child's biological father can be waived in accordance with **Section 159(1)** of the **Children Act**. The various reports on the home visits by the guardian ad litem, the adoption society and the Director of Children's Services indicate that the Applicants have the financial and emotional capability to adequately provide for the child's upkeep and education. This unanimous observation was confirmed by this Court when the Applicants attended court with the child, where the bonding between the child and the joint Applicants was evident.

The 2nd Applicant, R H, is a citizen of Denmark and this has implications on the present adoption process. In particular, the question arises as to whether the child can obtain Danish citizenship if the Applicants should consider moving with the child to Denmark. The 2nd Applicant obtained a letter dated 17th December 2010 from the Danish Ministry of Justice Department of Family Affairs to clarify this matter. This letter makes clear that an adoption order made in Kenya may be recognized in Denmark if the adoptive parents had permanent domicile with Kenya, if the legal effects of a Kenyan adoption order correspond to legal effects of a Danish adoption order, and provided that the Kenyan adoption order is not contrary to the fundamental Danish principles of adoption. While the letter from the said letter is not in itself a guarantee that the child in this matter will be accorded Danish citizenship, it would be presumptive to deny the child and the Applicants the opportunity to live together as a family solely on that ground. This Court has also taken note of the fact that the Applicants have adopted another Kenyan child, C.H.M.H. and this is a likely indicator that they will comply with the procedural requirements in order to secure Danish citizenship for the child in the event that they should consider moving to Denmark.

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 interests of the child to be adopted by the joint Applicants. The Applicants' application for adoption of the child is therefore allowed. The joint Applicants, T M M and R H, are hereby allowed to adopt Baby S C. Henceforth, the child shall be known as N M M H. Her date of birth shall be 13th September 2014. Her place of birth shall be Mlolongo, Kenya. She is presumed to be a Kenyan citizen by birth. The Registrar General is hereby directed to enter this order in the Adoption Register. The guardian ad litem is hereby discharged. It is so ordered.

DATED AT NAIROBI THIS 24TH DAY OF APRIL, 2015

M. MUIGAI

JUDGE

Mr. Mwenda for the Applicants.