

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 319 OF 2013

IN THE MATTER OF THE CHILDREN ACT, 2001

AND

IN THE MATTER OF BABY M

N M.....1ST APPLICANT

I K M.....2ND APPLICANT

JUDGMENT

The 1st Applicant, N M, and the 2nd Applicant, I K M, are a married couple seeking to be allowed by this Court to adopt Baby M, hereafter “the child”. The Applicants were married on 27th November 1982. Both the 1st Applicant and the 2nd Applicant are self-employed businesspersons. The Applicants’ marriage has been blessed with three (3) biological children of their own, all of whom are adults. The Applicants love children and so would like to provide a loving home to a needy child. They also want to expand their family. In this regard, they have applied to this Court to be allowed to adopt the child in the present matter. The Applicants’ three (3) adult children have given their consent to the Applicants to proceed to adopt the child.

The child in this matter was abandoned by his biological mother on the night of 19th December 2010 at Kahawa Sukari, and he was found and rescued by the 2nd Applicant. The case of the abandoned child was reported by the 2nd Applicant at Kahawa Sukari Police Station on the same night where it was recorded vide OB No. 19/19/12/2010. The District Children Office, Kasarani was informed of the incident and the child was taken to Getrude Children’s Hospital for treatment. Thereafter, the child was referred by the Children’s Office, Kasarani to Sanctuary Children’s Home at Kasarani where he was admitted on 20th December 2010 for care and protection.

On 30th September 2011, the child was committed by the Nairobi Children’s Court, vide committal order **P&C No. 342/2011**, to the custody of Sanctuary Children’s Home pending formal adoption proceedings. The Applicants were given custody of the child for mandatory foster care pending adoption pursuant to a foster care agreement which was signed on 1st October 2011. Since then, the child has been in the continuous custody and care of the Applicants. Pursuant to **Section 156** of the **Children Act**, Kenyan to Kenyan Peace Initiative, an adoption society, issued a certificate declaring the child free for adoption. The certificate is dated 30th September 2011 and is Serial No. 0236.

The Applicants filed an application for adoption on 20th December 2013 seeking, among others, orders from this Court that N M 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 Dr. E M M, a biological daughter of the Applicants, as the child’s legal guardian and to order that upon adoption the child be known as N M J. On 25th February 2014, this Court issued an order appointing N M 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, Kenyan to Kenyan Peace Initiative, the 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, N M, 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 parents of the child was dispensed with since the child was abandoned at birth and his biological parents could not be traced to give their consent. 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. 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 his 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 interests of the child to be adopted by the Applicants. Hence, this Court allows the Applicants' application for adoption. The Applicants, N M and I K M, are hereby allowed to adopt Baby M. Henceforth, the child shall be known as N M J. His date of birth shall be 19th December 2010. His place of birth shall be Kahawa Sukari in Nairobi, Kenya. He is presumed to be a Kenyan citizen by birth. Dr. E M, a biological daughter of the joint Applicants, shall be the legal guardian of the child should such eventuality arise. This Court directs the Registrar General to enter this order in the Adoption Register. The guardian ad litem is hereby discharged. It is so ordered.

DATED AT NAIROBI THIS 10TH DAY APRIL OF 2015

M. MUIGAI

JUDGE