

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
ADOPTION CAUSE NO. 10 OF 2015
IN THE MATTER OF THE CHILDREN ACT, 2001
AND
IN THE MATTER OF BABY P I

F N M.....1ST APPLICANT

G W N.....2ND APPLICANT

J U D G M E N T

The Applicants, F N M (“the 1st Applicant”) and G W N (“the 2nd Applicant”), seek by their application to be allowed by this court to adopt Baby P I (hereinafter referred to as “the child”). The Applicants are husband and wife. They celebrated their customary marriage in 1987 and formalized the same on 4th July 2014 at the Office of the Registrar in Nairobi. The Applicants are self-employed business persons. Both Applicants live together in Nairobi. The marriage has not been blessed with any children due to medical reasons. However, the 1st Applicant has a biological son from a previous marriage. The Applicants are sympathetic to the need for abandoned children to have a family and so would like to give a home to one. Thus, they have expressed an interest to adopt Baby P I.

The child who is the subject of the present adoption proceedings is presumed to have been born on 10th October 2010. The child was abandoned on 10th December 2011 at [particulars withheld] Estate in Nairobi. The child's mother requested one, Penninah Wangari to hold the child as she went to collect her house keys but she did not return to pick the child. The identity of the biological mother is unknown. A report on the matter of the abandoned child was made at Embakasi Police Station and the same was recorded vide OB No.[Particulars Withheld]. The child was subsequently referred to Imani Children's Home for care and protection, and this is evidenced by the child's admission form into the said home.

The Senior Resident Magistrate Children's Court sitting at Nairobi, in accordance with **Section 119** of the **Children's Act**, committed the child to Imani Children's Home on 19th April 2013 vide **P&C No. 102 of 2013**. The child was placed in the custody of the Applicants on 3rd September 2014 for mandatory bonding prior to the adoption. The child has since then been in the continuous custody and care of the Applicants. According to correspondence from Embakasi Police Station, the child in this matter remains unclaimed. A letter to that effect dated 15th August 2012 has been filed in court. In that regard, this court dispenses with the consent of the child's biological parents to the proposed adoption of the child by the Applicants. Buckner Kenya Adoption Services 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 25th July 2014.

The Applicants filed an application for adoption on 20th January 2015 seeking, among others, orders from this court that M K K 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 have also sought for an order that upon adoption, the child be known as R W. They have stated in their supporting affidavit that L W N, a cousin of the 1st Applicant and her husband F N have given their consent to be appointed as legal guardians of the child. On 20th February 2015, this court issued an order appointing M K K 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, Buckner Kenya Adoption Services, the relevant adoption society, prepared and filed in court favourable report in respect of the proposed adoption of the child by the 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, M K K, also filed a 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 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 her 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 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 his parents.

On the basis of a careful examination of the documents presented before this court 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, F N M and G W N, are hereby allowed to adopt Baby P I. Henceforth, the child shall be known as R W. Her date of birth shall be 10th October 2010. Her place of birth shall be Nairobi, Kenya. She is presumed to be a Kenyan citizen by birth. L W N, a cousin of the 1st Applicant and her husband F N 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 25TH DAY OF SEPTEMBER, 2015

M. MUIGAI

JUDGE

In the presence of;

Ms Ooga for the Applicants