

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MILIMANI

ADOPTION CAUSE NO. 154 OF 2014 (OS)

AND

IN THE MATTER OF THE CHILDREN'S ACT

(NO. 8 OF 2001)

AND

IN THE MATTER OF BABY B O

JUDGEMENT

1. P M M and F L K is a married Kenyan couple. They seek to adopt a male child, known for the purposes of these proceedings as Baby B O. They have moved the court by their Originating Summons dated 12th March 2014.
2. B O was found abandoned at the Kangemi area of Nairobi on 10th November 2008, and was taken by a Good Samaritan to the Kabete Police Station. As the report was not booked in the police Occurrence Book, the Good Samaritan, Faith Wanjiru Kimemiah, was forced to stay with the child for three weeks. The child was later admitted at the Abandoned Baby Centre Children's Home on 2nd December 2008. The child was subsequently committed to the institution by the Nairobi Children's Court in Protection and Care **Case No. 112 of 2009**. Efforts by the police to trace the parents of the child were not successful. The child was placed with the applicants on 12th May 2011. He was freed for adoption purposes by the Child Welfare Society on 23rd May 2014. It is estimated that the child was born on 10th November 2008.
3. To facilitate this adoption, the applicants have been assessed by the Child Welfare Society of Kenya adoption society, the Director of Children Services, and the guardian *ad litem*, F D A O. These three have compiled and filed their reports in court - the Child Welfare Society of Kenya adoption society's report is dated 23rd May 2014, while that of the Director of Children's Services is dated 23rd December 2014. The guardian *ad litem*'s report is dated 11th December 2014. All these reports are favourable and recommend the proposed adoption.
4. The applicants have filed documents that demonstrate that they have the financial and emotional capability and capacity to take care of the child. The child appears to have bonded well with them and he considers them to be his parents.
5. In the opinion of this court it would be in the best interests of the child that he is adopted by the applicants. The applicants will be able to provide a home and a family for the child to grow up in and thereafter become a useful member of the family and the society at large. Consequently, the applicants shall assume all parental rights and duties of the biological parents in respect of the adopted child; they shall treat the adopted child as if he was born to them. The applicants have been made aware that once the adoption order is made it shall be final and binding during the lifetime of the child and that the child shall have the right to inherit their property. The applicants cannot give up the child owing to any subsequent unforeseen behaviour or other changes in the child.

6. I am satisfied that all the legal requirements for a local adoption have been met. The only concern that I must record is that the child was placed with the applicants before he had been formally declared free for adoption. That was inconsistent with the very clear provisions of the Children Act on the matter. I have noted that this has been a consistent violation of the provision by the Child Welfare Society of Kenya, a practice that must be condemned. The adoption society should take steps to ensure that this is not repeated. I note however that the child has been with the applicants since 12th May 2011 and has since bonded with them. It would be unjust to decline the application and require that he be returned to the children's home. I am therefore inclined to overlook the violation in the best interests of the child.

7. The court allows the applicants application to adopt the child. The applicants, P M M and F L K, are hereby allowed to adopt the child, Baby B O. He shall hereafter be known as B M M. B N M is hereby appointed the legal guardian of the child in the event of the untoward happening to the applicants. As the child was born to an unknown mother within Kenya, I hereby presume him to be Kenyan by birth. The Registrar-General is directed to enter this adoption order in the adoption register. The guardian *ad litem* is hereby discharged.

DATED, SIGNED and DELIVERED at NAIROBI this 30TH DAY OF OCTOBER, 2015.

W MUSYOKA

JUDGE