



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**ADOPTION CAUSE NO. 288 OF 2013**

**IN THE MATTER OF THE CHILDREN ACT, 2001**

**AND**

**IN THE MATTER OF BABY M- MINOR**

**L A M.....1<sup>ST</sup> APPLICANT**

**S A W.....2<sup>ND</sup> APPLICANT**

**J U D G M E N T**

The applicants, L A M and S A W, are husband and wife. They were married on 19<sup>th</sup> June 2008 in Italy. The 1<sup>st</sup> Applicant is an Italian national while the 2<sup>nd</sup> Applicant is a Canadian national. They are employed as Chefs at *[particulars withheld]* Hotel Limited in Nairobi. The Applicants have so far not been blessed with any biological children of their own. They have been residents in Kenya since the year 2010. They have therefore made this application as foreign residents living in Kenya. This is under the Rule that allows foreigners who have lived in Kenya for a period of more than three (3) years to adopt a child in such capacity. The applicants wish to adopt a child. Baby M (the child) was presumed to have been born on 11<sup>th</sup> October 2012. The child was found abandoned at Kiganjo Estate within Makongeni area in Thika on 7<sup>th</sup> January 2013. A report of the abandonment was made to Makongeni Police Station on 8<sup>th</sup> January 2013. The Thika Children's Office was informed of the incident and managed to secure a temporary home placement for the child at Karibu Centre Children's Home for temporary care and protection. Thereafter, the child was transferred to Nest Children's Home where he was admitted on 11<sup>th</sup> January 2013. The Children's Court, Kiambu committed the custody of the child to the said children's home on 16<sup>th</sup> July 2013 pending these adoption proceedings. The Applicants were given custody of the child for mandatory foster care pending adoption pursuant to a foster care agreement signed on 9<sup>th</sup> August 2013. They took custody of the child on the same day. Since then, the child has been in the continuous custody and care of the applicants.

Prior to the hearing of the adoption, KKPI, an Adoption Society prepared a report which is filed in court. They also issued a certificate declaring the child free for adoption. The certificate is dated 31<sup>st</sup> July 2013. The Director of Children's Services prepared a report which is on record. The guardian ad litem, S O O, prepared a report which has been filed in court. All the reports are favourable and recommend that the court allows the applicants to adopt the child. I have evaluated the facts of this adoption. This is an adoption by foreign residents in Kenya. It is evident that the applicants have fulfilled all the legal requirements pertaining to the adoption of the child. The consent of the biological parents of the child was dispensed with since the child was abandoned. They cannot be traced to give their consent. This court is satisfied 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 that the applicants with the child in court. It was evident that in the period that the applicants have had custody of the child, the child has bonded well with them. The child considers the applicants his parents.

This court formed the opinion that it would be in the best interest of the child to be adopted by the applicants. I allow the applicants' application for adoption. The applicants, L A M and S A W, are hereby allowed to adopt Baby M. Henceforth, the child shall be known as M M M. His date of birth shall be 11<sup>th</sup> October 2012. His place of birth shall be Nairobi- Kenya. He is presumed to be a Kenyan citizen by birth. M M and G P, sister and brother in-law of the 1<sup>st</sup> applicant shall be the legal guardians of the child should such eventuality arise. I direct the Registrar General to enter this order in the adoption register. I hereby discharge the guardian ad litem. It is so ordered.

**DATED AT NAIROBI THIS 31<sup>ST</sup> DAY OF JULY, 2014**

**L. KIMARU**

**JUDGE**