



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**ADOPTION CAUSE NO.104 OF 2010**

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

**AND**

**IN THE MATTER OF BABY AM alias A.M – MINOR**

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

**Z.M.M.....  
.....2<sup>ND</sup> APPLICANT**

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

The applicants, M.M and Z.M.M, are husband and wife. They were

married under the Kamba customary law in 1998 but converted the said marriage to a statutory one on 19<sup>th</sup> June 2008. The said conversion was made under the **Marriage Act**. The applicants have not been blessed with biological children of their own. They wish to adopt a child. Baby A.M (the child) was found abandoned along New Pumwani Road on 6<sup>th</sup> March 2008. The child was presumed to have been born on 25<sup>th</sup> December 2008. The child was rescued and taken to Kamukunji police station. The child was first taken to Women's Rights Awareness Programme Centre before later being admitted to Thomas Barnado Children's Home. The child was committed to the care and protection of the said Children's Home on 27<sup>th</sup> June 2008 by the Nairobi Children's Court. Since then, no one has come forward to claim the child. The relevant authorities, including the police, have so far not been able to trace the biological parents of the child. In the premises therefore, this court dispenses with the consent of the biological parents for the purpose of these adoption proceedings. The child was declared free for adoption on 18<sup>th</sup> September 2008. A certificate to that effect was issued by Kenya Children's Home Adoption Society. The child was placed under the care and custody of the applicants on 28<sup>th</sup> October 2008 for compulsory foster care pending these adoption proceedings.

The applicants were assessed by Kenya Children's Home, the adoption society and by the Director of Children's Services. The two organizations recommend the application by the applicants to adopt the child. P.M, the guardian ad litem, also prepared a report which is favourable and recommend the adoption. This is a local adoption. As stated earlier in this judgment, the applicants are married couple who have expressed their wish to adopt a female child. The applicants are Kenyan citizens by birth. They established that they have the financial and emotional capability and capacity to take care of the child. In the period of about three (3) years that the child has been in the applicants' custody, it was evident to the court that the child has bonded with them. The child considers the applicants to be her parents. All the relevant agencies have recommended the proposed adoption. This court is of the view that the applicants have fulfilled all the legal requirements for a local adoption.

This court formed the opinion that it would be in the best interest of the child for the child to be adopted by the applicants. The applicants will provide a home and a family for the child to grow up and be a useful member of the society. The applicants will be required to execute an undertaking that they shall assume all the parental rights and duties of the biological parents in respect of the adopted child; they shall treat the adopted child as if she was born to them in their marriage; they have been made aware that once the adoption order is issued, it shall be final and binding during the lifetime of the child that they shall adopt; that the child shall have the right to inherit their property; that an adoption order cannot be recanted, and further, that they shall not give up the child owing to any subsequent unforeseen behaviours or other changes in the child.

The court will therefore allow the applicants' application to adopt the child. They have fulfilled the legal conditions for local adoptions by a married couple. The applicants, M.M and Z.M.M, are hereby allowed to adopt baby A.M. Henceforth, the child shall be known as N.M.M. Her date of birth shall be 25<sup>th</sup> December 2008. S.M shall be the legal guardian of the child should misfortune befall the applicants. The Registrar General is hereby directed to enter this adoption order in the Adoption Register. The guardian ad litem is hereby discharged. It is so ordered.

**DATED AT NAIROBI THIS 11<sup>TH</sup> DAY OF MARCH, 2011**

**L. KIMARU**

**JUDGE**