



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
(Coram: Ojwang, J.)

ADOPTION CAUSE NO. 14 OF 2010

**IN THE MATTER OF: THE CHILDREN ACT, 2001
 (ACT NO. 8 OF 2001)**

-AND-

IN THE MATTER OF: *P.H alias P.K. B*

-AND-

**IN THE MATTER OF: AN APPLICATION FOR
 ORDERS OF ADOPTION FOR**

THE MINOR *P.H alias P. K.B BY P.Y.N AND R.M.M. I*

-BETWEEN-

1. P. Y.N

2.

**R.M.M.I.....JOINT
 APPLICANTS**

-AND-

LITTLE ANGELS NETWORK.....

.....RESPONDENT

JUDGMENT

The applicants moved the Court by Originating Summons dated **16th September, 2010**, filed on **20th September, 2010** and brought under ss. 154, 156, 157, 158, 160, 169 and 170 of the

Children Act, 2001 (Act No. 8 of 2001) and s. 3A of the Civil Procedure Act (Cap. 21, Laws of Kenya). The application carries three substantive prayers:

- (a) that, M.W.G of Post Office Box No. [...], Mombasa be appointed guardian ad litem in this case;*
- (b) that, P.Y.N and R.M.M.I be authorized to adopt P. H alias P.K.B, the minor child;*
- (c) that, the name P.H alias P.K.B do change to P.H. Y.*

Annexed to the Summons is a “Statement in Support of an Application for Adoption”, the content of which is similar to pleadings. In this Statement, the applicants identify themselves, stating that 1st joint-applicant is married to 2nd joint applicant, the two having been born, respectively, on **20th March, 1975** in Mombasa District, and **27th December, 1982** in Machakos; and that they are both of sound mind and are in a fit medical condition. The joint-applicants state that they are of African race, Kenyan by nationality, and have no children of their own. The 1st joint-applicant is an employee of the KN, while 2nd joint-applicant is a housewife; they are committed Christians, who have a reliable financial base.

The applicants state that the minor, **P.H alias P.K. B** was born on **19th December, 2009**, and is aged 8 months; they desire to adopt her.

The joint-applicants aver that they “have not received or agreed to receive, and no person has made or given [them], any payment.....or consideration” in relation to the proposed adoption. They state that they “have not met any person applying for an adoption order in respect of **P.H alias P. K. B**”.

The joint-applicants have sworn an affidavit, dated **16th September, 2010** in which they aver that they are Kenyan

citizens currently residing at Mtongwe in Mombasa; that they wish to adopt **P. H alias P.K.B**; that they are financially stable and will be able to take care of the adopted child, and provide for her a decent life; that they are physically and mentally fit; that the minor is below the age of majority; that they have lived with the minor since her birth; that they intend to bring her up in the Christian culture until she attains the age of majority; that they are ready and willing to accord the child “all parental love and affection to enable her to lead good-quality life”; that they have no other interest in this matter than the best interests of the child.

Also annexed to the application is the affidavit of the proposed guardian *ad litem*, **M.W.G** – a family friend to **P. Y.N** and **R. M. M. I**, the applicants. She avers that the facts stated in the application are correct, to her personal knowledge, and that the applicants have the means to enable them to maintain and bring up the subject-minor. The deponent deposes that it is well understood by the applicants that “an adoption order is irrevocable and that the order shall make them responsible for the maintenance and upbringing of the minor child”; and she avers that the proposed adoption will be in the best interests of the minor child. The deponent avers that she has no personal interest in the proposed adoption which may be adverse to the minor child.

A further document annexed to the Originating Summons (and attached verifying affidavit), is a “Certificate of Understanding” executed before a Commissioner for oaths dated 16th September, 2010, whereunder the applicants state their understanding that “the effect of an adoption order will be to vest in us permanentlythe rights of parents”, and that they will bear “the responsibility [for] caring and providing for the child”.

The respondent has filed a “Report to Declare a Child Free For Adoption Pursuant to Section 156(1) [of the Children Act]”,

dated **18th August, 2010**, as well as a Certificate of Declaring a Child Free for Adoption, No.[.....] dated **30th June, 2010**. The Report gives the child's history, from the time she was recovered from conditions of grave adversity, and committed by Court order (Nanyuki SPM's Court, P & D No. 7 of 2010) to the care of New Life Home Trust, Nyeri, wherefrom the applicants identified her for possible adoption, and whereupon the respondent conducted the preparatory inquiries and filed the "home study" report, recommending the proposed adoption.

This case was formally presented before me in Chambers, on **12th October, 2010** when the applicant was represented by learned counsel, **Mrs. Kipsang**, and the respondent by its responsible officer.

The submissions were consistent with the several papers as filed; and I formed the clear impression that the applicants were a responsible and sincere couple making the benevolent and humane gesture of providing home and parental care to a parentless child. It is the Court's obligation, as part of its quest for social justice, to sustain such an application which enhances humane values.

I will make orders as follows:

- (1) M.W.G of Post Office Box No. [...] Mombasa is hereby appointed guardian ad litem in this case.**
- (2) The joint-applicants, P.Y.N and R.M.M.I are hereby authorized to adopt P.H alias P.K.B, the minor child.**
- (3) The minor's current name, P.H alias P.K.B shall change to P. H.Y.**
- (4) Costs shall be in the cause.**

DATED and DELIVERED at MOMBASA this 15th day of April, 2011.

.....

J. B. OJWANG
JUDGE