

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
ADOPTION CAUSE 5 OF 2010
IN THE MATTER OF THE CHILDREN ACT, 2001
AND
IN THE MATTER OF D.S – MINOR

B. N.M.....1ST
APPLICANT

P.M. N.....2ND
APPLICANT

JUDGMENT

The applicants, B.N.M and P.M.N, are husband and wife. They were married on 3rd September 1994 under the **African Christian Marriage and Divorce Act** at AIC Kangungi in Kitui District. The applicants have not been blessed with biological children of their own due to medical reasons. They wish to adopt a child. Baby D. S (the child), presumed to have been born on 15th April 2008, was found abandoned on 16th April 2008 at a farm in K-M. The child was rescued by a good Samaritan and taken to Sunton police post at Ruaraka. The police referred the child, first to Kenyatta National Hospital where the child was admitted. The child was later discharged from the said hospital and taken to New Life Home Trust in Nairobi. The Children’s Court at Nairobi committed the custody and care of the child to the said Children’s Home pending further court proceedings. Efforts by the concerned authorities, including the police and the Director of Children Services, to trace the whereabouts of the biological parents of the child have been in vain. This court therefore dispenses with the consent of the biological parents of the child. The child was declared free for adoption on 29th July 2009 by Little Angels Network adoption society. The child was placed under the care and custody of the applicants on 1st December 2008 for compulsory foster care pending these adoption proceedings. The applicants have had the custody of the child since then.

The applicants were assessed by Little Angels Network, the adoption society and by the Director of Children’s Services. The two organizations recommend the application by the applicants to adopt the child. J.M, the guardian ad litem, also prepared a report which is favourable and recommends the proposed adoption. This is a local adoption. As stated earlier in this judgment, the applicants are a married couple who have expressed their wish to adopt a male 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 more than two (2) years that the child has been in the custody of the applicants, it was evident to the court that the child has bonded with them. The child considers the applicants to be his parents. All the relevant agencies have recommended the 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 he 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 behaviour or other changes in the child.

The court will therefore allow the applicants' application to adopt the child. They have fulfilled the legal requirements for local adoptions by a married couple. The applicants, B.N.M and P.M.N, are hereby allowed to adopt baby D.S. Henceforth, the child shall be known as I.M.N. 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 1ST DAY OF APRIL, 2011

L. KIMARU

JUDGE