



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

ADOPTION CAUSE NO. 11 OF 2010

IN THE MATTER OF: CHILDREN’S ACT NO. 8 OF 2001

AND

IN THE MATTER OF: AN APPLICATION BY ARG

AND

P M FOR AN ORDER OF ADOPTION

IN THE MATTER OF: ADOPTION OF M (THE CHILD)

AND

AL R G1ST APPLICANT
P M2ND APPLICANT

JUDGEMENT

Before me is the application for Adoption dated 18th June 2010 by which the joint Applicants **A R G** and **P M** seeks the following orders.

“(a) THAT the requirements of Section 158(3) (a), 158(4) (a) of the

Children's Act be waived as provided for by Section 159(1) (a) of the Act.

(b) THAT the applicants be authorized to adopt M the said child to be known as M N R after the adoption.

(c) THAT the Registrar General be directed to make in the adopted children's register, an entry to the effect that M N R is so adopted as per the particulars of the adopted child."

The application was heard by way of Viva Voce evidence. One **M N M** was with the leave of the court appointed as **Guardian ad litem in this cause.**

The Applicants are a couple who married under Statutory Law in August 2000. This fact is proved by their Marriage Certificate Serial No. 970198 annexed to the Originating Summons. The couple having been married for ten years and not being blessed with their own biological child during this time decided to adopt a child. They met the child Mat Tumaini Children's Home. The child who had been abandoned at birth at Changamwe roundabout was placed in the children's home for care and custody. The said child was handed over to the Applicants under a fostering arrangement by the Child Welfare Society of Kenya. Thereafter the Applicants filed this present application for adoption. S. 156(1) of the Children Act provides

"156(1) No arrangement shall be commenced for the adoption of a child unless the child is at least six weeks old and has been declared free for adoption by a registered adoption society in accordance with the rules prescribed in that behalf."

The subject child was born on 17th May 2009 and this is above the six week age limit provided for by S. 156(1). The child who was found abandoned shortly after birth at the Changamwe roundabout has been declared '**Free for Adoption**' by the Child Welfare Society of Kenya which is a registered adoption agency vide its certificate No. 342 dated 5th June 2010. I am therefore satisfied that the prerequisite conditions for adoption as set out in S. 156(1) Children Act have been met.

The Applicants both gave evidence before me. They struck me as a decent honest couple who have a great desire to adopt this child. Both

are in stable paid employment with incomes that are more than sufficient to enable them raise a child comfortably. The couple in addition own their own home in the Mtopanga area of Mombasa. The Report on the Home Visit indicates that the house is airy, spacious and comfortable. They have enough space to raise a child. Both Applicants assured the court that they fully understand and appreciate the legal implications of an adoption order and are willing to take on the duties and obligations of parents to this child. Currently they do provide for all the clothing, food, accommodation and medical needs of the child. From the annexed Health Card I note that the child has received all relevant vaccinations and is regularly taken to have her health and weight assessed. In addition the extended family have approved and warmly accepted the decision of the couple to adopt a child. From all the foregoing I have no doubt that the Applicants are responsible people well able to provide the child with a proper upbringing in a stable Christian home.

Be that as it may the primary consideration in any application for adoption is the best interests of the child. S. 4(2) of the Children Act 2001 provides

“(2) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

The baby M was released to the Applicants on a fostering arrangement in January 2010 when she was about 8 months old. She has continued to live with the Applicants in their home to date. She is now about 1 year 4 months old. No doubt she has bonded well with the couple. I did see the child in court. She appeared to be a healthy, happy normal 1 year old child. She was clearly attached to both Applicants. Certainly it would serve the best interests of this child to be raised in a stable home environment such as that the Applicants have been providing her with.

The child was abandoned at birth in May 2009. To date no person has come forward to claim her. In view of the absence of any known biological parent or relative of this child the consents required for her adoption are hereby dispensed with in line with S. 159(a) of the

Children Act.

Based on the foregoing I do hereby allow this application for Adoption in terms of prayers (a), (b) and (c) thereof. No orders on costs.

Dated and Delivered in Mombasa this 4th day of October 2010.

M. ODERO
JUDGE

Read in open court in the presence of:-
Applicants

M. ODERO
JUDGE
4/10/2010