

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ADOPTION CAUSE NO.179 OF 2009
IN THE MATTER OF THE CHILDREN ACT, 2001
AND
IN THE MATTER OF BABY J *alias* D.A – MINOR

S.M. N.....1ST APPLICANT

M.W.K.....2ND APPLICANT

J U D G M E N T

The applicants, S.M.N and M.W.K, are husband and wife. They were married on 12th February 1995 under the **African Christian Marriage and Divorce Act**. The applicants have not been blessed with biological children of their own. Medical intervention established that the applicants are unable to have children of their own. They wish to adopt J alias D.A (the child). The child was on 9th February 2009 found abandoned at Waruku trading center in Nairobi. Good Samaritans took custody of the child and reported the matter to Muthangari police station. The child was taken to New Life Home Trust for care pending formal court proceedings. The child was committed to the care of the said institution by the Nairobi Children’s Court on 15th May 2009. The applicants took custody of the child on 3rd April 2009 for compulsory foster care pending these adoption proceedings. Since then, the child has been in continuous care of the applicants.

The applicants were assessed by the Director of Children Services, KKPI Adoption Society and by S.S, the guardian ad litem. Their respective reports have been filed in court. This court has read the said reports. They are favourable and recommend the court to approve the applicants’ application to adopt the child. This is a local adoption. The child was found abandoned by good Samaritans. A report was made to the police. The police have not been able to trace the biological parents of the child. The consent of the biological parents of the child is hereby dispensed with. The adoption society on 23rd September 2009 issued a certificate declaring the child free for adoption. That report is in the court record. Having evaluated all the facts of this case, it was clear to this court that the applicants have the financial and emotional capacity and capability to take care of the child. It was evident to the court that since the applicants took custody of the child, the child has bonded with them. This court is satisfied that the applicants have fulfilled the legal requirements for 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.

In the premises therefore, this court will allow the applicants’ application to adopt the child. The applicants, S.M.N and M.W.K, are hereby allowed to adopt baby J alias D.A. Henceforth, the child shall be known as G.W.M. F.N.M is hereby appointed to 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.

DATED AT NAIROBI THIS 17TH DAY OF NOVEMBER, 2010

L. KIMARU
JUDGE