



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**ADOPTION CAUSE NO.139 OF 2015**

**IN THE MATTER OF THE CHILDREN ACT**

**AND**

**IN THE MATTER OF AN APPLICATION FOR ADOPTION OF BABY S aka G /G G N**

**C N G..... 1ST APPLICANT**

**M W W .....2ND APPLICANT**

**JUDGMENT**

The applicants **C N G** and **M W W** are seeking to be authorized to adopt **Baby G** hereinafter referred to as the child. They seek that upon making the adoption the child be called **G G N**. They also seek that **G K K** and **Z W** be the Legal Guardians of the child in the event of death or incapacity of the applicant before she is of full age.

The applicants are both Kenyan citizens and holders of Identity Card Number [Particulars Withheld] and [Particulars Withheld] respectively. Their date of birth 18<sup>th</sup> December 1973 and 21<sup>st</sup> May 1968 respectively. The applicants solemnized their marriage under the African Christian Marriage and Divorce Act Chapter 151 Laws of Kenya on 9th August 2003 at Full Gospel Church in Wote in Makueni District. The applicants reside in Kahawa West Nairobi – Plot No. L.R. Ruiru/Ruiru East Block [..]/[....] in Ruiru. The 1st applicant is an accountant while the 2nd applicant is a Business Lady. The applicants are of good health and do not have any previous criminal record.

The child was born on 16th September 2011 at Kenyatta National Hospital by a mentally unstable woman who was later transferred to Mathare Mental Hospital on 23rd September 2011 leaving the child behind. The baby was committed to Hope House Babies Home for 3 years on 11th May 2012 as a child in need of care and protection. No history was taken on the biological mother as she had difficulties in communicating and could only nod on being talked to. During her stay in the Hospital nobody visited her. She was later transferred to Mathare Mental Hospital for treatment and since then nobody came to claim the child. The Child was committed to the home vide **P&C No. 107 of 2012** by the Senior Resident Magistrate’s Court at Nairobi Children’s Court. He was declared free for adoption on 30<sup>th</sup> October, 2013 by KKPI Adoption agency a child free for adoption by Freeing Certificate No. 409. On 20th February 2014 the child was placed with the applicants.

The Department of Children Services filed their report on 4th April 2018. Based on the scanty and contradictory information on the whereabouts of the biological mother and her kin. It was also noted that the Kenyatta Police Post did not give a further report on the status of the mother and no clear information had been given from Mathare Mental referral Hospital. The children’s officer left it to the discretion of the court to make a determination of the same based on the best interest of the child.

The guardian *ad litem* filed her report on 29th October 2015. The guardian *ad litem* recommends the adoption. She observed that the applicants are financially able to provide for the child. The child is happy, well fed and clothed. That it is in the best interest of the child to be adopted by the applicants.

Though the applicants have fulfilled all the legal requirements relating to the adoption of the child this Court is not satisfied on whether the child is actually free for adoption. Scanty and contradictory information has been given on the whereabouts of the biological mother. The police vide their final letter dated 19th January 2013 indicated that no claimants have come forward to claim the child. No documents were filed in court from Kenya National Hospital as to the details and/or circumstances of the biological mother of the child. No documents to confirm her mental condition and transfer to Mathare Mental Hospital and no records/documents are availed from Mathare Mental Hospital as to the status/progress/identification of the biological mother of the child.

From the foregoing this court finds that it would be premature to grant the orders sought without having the two reports to verify whether indeed the child in question is free for adoption. It is so ordered. Costs in the cause.

**DATED, SIGNED AND DELIVERED THIS 12<sup>TH</sup> DAY OF NOVEMBER 2018.**

**M. W. MUIGAI**

**JUDGE- FAMILY DIVISION HIGH COURT**

**IN THE PRESENCE OF;**

**MR. GATUMUTA FOR THE APPLICANT**

**PATRICK KINUTHIA COURT CLERK.**