

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 29 OF 2016

IN THE MATTER OF THE CHILDREN ACT, 2001

AND

IN THE MATTER OF BABY EN (MINOR)

BMG..... APPLICANT

JUDGMENT

BMG (“the Applicant”) is a sole female applicant. The Applicant has never been married. She is employed as a community nurse by the Ministry of Medical Services. She has no biological children of her own. Thus, she wishes to adopt a child.

The Applicant seeks by her application to be allowed by this Court to adopt Baby EN (hereafter “*the child*”). The child who is the subject of the present adoption proceedings is presumed to have been born on 1st January 2004. She was found abandoned by police on patrol inside an unfinished house in [Particulars Withheld] area within Kasarani Constituency in Nairobi County on 8th May 2004. A report on the matter of the abandoned child was made to Mwiki Police Station and the same was recorded vide OB No. [particulars withheld]. The child was taken to Soon Children’s home for temporary care and protection and this is evidenced by the child’s admission form into the said home.

The Senior Resident Magistrate Children's Court sitting at Nairobi, in accordance with **Section 119** of the **Children Act**, committed the child to the said children’s home on 9th July 2014 vide **P&C No.** [particulars withheld]. The child was placed in the custody of the Applicant on 10th February 2015 for mandatory bonding prior to adoption. The child has since then been in the continuous custody and care of the Applicant. According to correspondence from relevant police authorities at Mwiki Police Station, no one has come forward to claim the child. A report to that effect has been filed in Court. Thus, this Court dispenses with the consent of the child’s biological parents to the proposed adoption of the child by the Applicant. The child has been declared free for adoption pursuant to **Section 156 (1)** of the **Children Act**, by the adoption society, KKPI. The said freeing certificate is no. 493 and the same is dated 28th January 2015.

In an application filed on 4th March 2016, the Applicant sought among others, orders from this Court that KMM be appointed as the child’s guardian ad litem, and that the Director of Children’s Services be ordered to investigate the Applicant’s suitability to adopt the child and submit a report. The Applicant further sought for an order that upon adoption the child be known as E N. The Applicant also sought to have the Court appoint her sister, JWK and her brother-in- law, VKM as the child’s legal guardians. On 26th May 2016, this Court issued an order appointing KMM as the child’s guardian ad litem, and further directing the guardian ad litem and the Director of Children’s Services to file their respective reports in Court.

Pursuant to **Section 156(1)** of the **Children Act**, before this matter came up for hearing, KKPI, the relevant adoption society, prepared and filed in Court a favourable report in respect of the proposed adoption of the child by the Applicant. Another report in respect of the proposed adoption of the child by the Applicant was prepared by the Director of Children’s Services, and this report was similarly in favour of the proposed adoption. The guardian ad litem, KMM, also filed the statutory report made under **Section 160(2)** of the **Children Act** in which he noted that the proposed adoption of the child by the

Applicant is in the best interest of the child.

All the statutory reports that have been filed in respect of the proposed adoption of the child by the Applicant have recommended that this Court allows the Applicant to adopt the child. This Court has evaluated the facts of this adoption. This is a local adoption. It is evident that the Applicant has fulfilled all the legal requirements relative to the adoption of the child. The consent of the biological parents of the child was dispensed with since the child was abandoned at birth, and her biological parents could not be traced to give their consent. This Court has satisfied itself that the Applicant is qualified and able to take care of the child. The home visits by the guardian ad litem, the adoption society and the Director of the Children's Services established that the Applicant has the financial and emotional capability to provide for the upkeep and education of the child. This Court observed the Applicant with the child in Court and it was evident that in the period that the Applicant has had the custody of the child, the child has bonded well with her. The child considers the Applicant to be her mother.

On the basis of a careful examination of the documents presented before me as well as the observations made therein, this Court has formed the opinion that it would be in the best interest of the child to be adopted by the Applicant. Hence, this Court allows the Applicant's application. The Applicant, BMG is hereby allowed to adopt Baby EN. Henceforth, the child shall be known as EN. Her date of birth shall be 1st January 2004. Her place of birth shall be Kasarani within Nairobi County. She is presumed to be a citizen of Kenya by birth. The Applicant's sister, JWK and her brother-in-law, VKM, shall be the legal guardians of the child should such eventuality arise. This Court directs the Registrar General to duly enter this order in the Adoption Register. The guardian ad litem is hereby discharged. It is so ordered.

DATED AT NAIROBI THIS 2ND DAY FEBRUARY, OF 2017.

M. W. MUIGAI

JUDGE

In presence of:-

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