

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO.33 OF 2016

IN THE MATTER OF THE CHILDREN ACT, 2001

AND

IN THE MATTER OF BABY B M - MINOR

A N K.....1ST APPLICANT

R W K.....2ND APPLICANT

JUDGMENT

The first Applicant is an adult male residing and carrying on business in Kenya. He is a Kenyan citizen and a Christian. He resides in Limuru. He is in a monogamous marriage contracted under the **African Christian Marriage Act- Cap 150 (now repealed)**. The second Applicant is an adult female residing and carrying on business in Kenya. She is also a Kenyan citizen and a Christian. She is a [particulars withheld] and she is married to the first Applicant according to their Marriage Certificate of serial number [Particular Withheld].

This matter is about a female child who is estimated to have been born on 1st November 2014. She was found abandoned in Barua Coffee Estate, Kiambu on 7th November 2014. She was then rescued by good Samaritans, B W and J M as per the Kenya Police Service letter to Jean Petty Legacy Home, dated 25th June 2015. The good Samaritans accompanied the child to Kiambu Police Station where they filed a report vide OB number [Particular Withheld]. The police took the child to Kiambu District Hospital for a medical check-up. The matter was also reported to the Kiambu District Children's Officer, who sought home placement for the child at Jean Petty Legacy Home-Ruaka where the child was admitted on 14th November 2014 after discharge from the said hospital according to the Discharge Card dated 12th November 2014. The child has been in the custody of the home ever since. The child was thereafter presented before the Children's Court in Kiambu for committal to Jean Petty Legacy Home upon recommendation by the Kiambu District Children's Office. Committal was effected vide an order of the Court in Protection and Care case number 12 of 2015 on 3rd February 2015. The child was not claimed. After admission to this home the child generally exhibited good health. She received all relevant vaccinations according to the Child Health Card from Karuri Sub-District Hospital dated 18th June 2015 and was declared of good health accordingly as per the report dated 29th February 2016 by Change Trust.

The Applicants signed a care agreement from Jean Petty Children's Home dated 11 July 2015 for a four month mandatory bonding period within which the proposed adoptive parents will take care of the child as their own. The child bonded well with the Applicants during this period and is well adjusted with her new environment. The Applicants via their Origination Summons filed on 9th March 2016 pray that they be authorised to adopt Baby BM and her name be changed to MGN. They also seek orders that PN and GN, friends of the Applicants, be appointed the legal guardians of the child should there be an eventuality. A consent dated 29th February 2016 by PN has been attached.

The Director of Children's Services Ministry of Labour, Social Security and Services was by an order of this court dated 9th May 2016, required to investigate the Applicant's fitness to adopt and file a report within 45 days. This was filed on 11th October 2016. It sets out the particulars of the Applicants and the

Child and their background. In this report, the Children's officer states that this is a local adoption where the Applicants fulfil the Legal requirements for adoption under the provisions of the Children's Act 2001. They have proved capable of taking on parental responsibility over the child in this matter including the statutory placement period prior to adoption during which she has been under their continuous care and control. The child having been abandoned by her biological mother is considered fit for adoption. None of her relatives have claimed her. Adoption offers her the perfect alternative family. The child has bonded with the Applicants and adoption would certainly be in her best interest. This report further recommends that the Applicants be allowed to adopt the child and change her name to BMGN.

Change Trust is the adoption society facilitating this adoption. Accordingly the society filed a Declaration required of it by this court. This report confirms the background of the child. It further informs that the child has bonded well with her prospective adoptive parents. According to this report, Jean Petty Legacy Home availed all relevant documents required for the adoption of the Child. A case Committee by Change Trust sat on 30th June 2015 and upon review of the Child's dossier, was satisfied of her availability for adoption. The committee proceeded to declare the child free for adoption and issued a freeing certificate filed on 21st April 2016 of serial number *[particulars withheld]*.

By an order of this court dated 9th May 2016, PNK was appointed Guardian *ad litem*. In this regard she filed a report on 9th September 2016. This report confirms the background of the adoptive parents and the child. It further informs that the extended family of the Applicants support the adoption. The Applicants reasons for choosing adoption as an option herein is health related however they are of good physical and mental health. They have no criminal records. They have bonded well with the child and have cared for her well during the mandatory bonding period. It is in light of the above reasons that the guardian *ad litem* in her recommendation has no objection as to the Applicants being granted orders to adopt the child.

DETERMINATION

After carefully considering this Application, it is clear that the child in this matter was abandoned and therefore the court invokes its power pursuant to **Section 159 of the Children Act 2001** to dispense with all consents required under **Section 158(4)** of the same Act. The Child is in need of alternative family care. The Applicants ANK and RWK are hereby allowed to adopt baby BM in the best interest of the child. Henceforth, the child shall be known as MGN. She is presumed to be a Kenyan Citizen by birth, born on 1st November 2014 within Kiambu County. PN and GN shall be the legal guardian of the child should any eventualities 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 ordered.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 3RD DAY OF APRIL, 2017.

MARGARET W. MUIGAI

JUDGE