

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 69 OF 2015

IN THE MATTER OF THE CHILDREN ACT, 2001

AND

IN THE MATTER OF BABY S E

P M N1ST APPLICANT

R W K2ND APPLICANT

JUDGMENT

The Applicants, P M N (“the 1st Applicant”) and R W K (“2nd Applicant”), seek by their application to be allowed by this Court to adopt Baby S E (hereafter “the child”). The Applicants are husband and wife. They were married under customary law in the year 2006. They solemnized their marriage on 7th May 2013 when they were married at the office of the Registrar in Nairobi under the **Marriage Act** (*now repealed*). The 1st Applicant is employed as an Operations Manager at Malibu Pharmacy Limited while the 2nd Applicant is a civil servant. They have been blessed with three (3) children. The Applicants are sympathetic to the needs of needy children and therefore wish to provide a home for a needy child. They thus wish to adopt a child.

The child who is the subject of the present adoption proceedings is presumed to have been born on 24th November 2012. He was found abandoned outside the Kenya Kids Children’s Home in Kitengela on 26th November 2012. A report on the abandonment was made on the same day at Kitengela Police Station. The child was placed with Mahali Pa Maisha Children’s Home for care and protection. The Principal Magistrate Children’s Court sitting at Mavoko, in accordance with **Section 119** of the **Children Act**, committed the child to the said children’s home on 25th March 2013 vide **P&C No 13/2013**. The child was placed in the custody of the Applicants on 7th September 2013 for mandatory bonding prior to adoption. The child has since then been in the continuous custody and care of the Applicants. According to correspondence from relevant police authorities at Kitengela 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. Little Angels Network, an adoption society, issued a certificate declaring the child free for adoption pursuant to **Section 156(1)** of the **Children Act**. The said freeing certificate is no. 001346 and the same is dated 4th September 2013.

In an application filed on 16th March 2015, the Applicants sought among others, orders from this Court that Faith Doris Awiti Obondo be appointed as the child’s guardian ad litem, and that the Director of Children’s Services be ordered to investigate the suitability of the Applicants to adopt the child and submit a report. The Applicants also sought to have the Court appoint S G M and H W N as the child’s legal guardians. They further sought for an order that upon adoption the child be known as M W M. On 24th April 2015, this Court issued an order appointing Faith Doris Awiti Obondo 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, Little Angels Network, the relevant adoption society, prepared and filed in Court a favourable report in respect of the

proposed adoption of the child by both Applicants. Another report in respect of the proposed adoption of the child by the Applicants was prepared by the Director of Children’s Services, and this report was similarly in favour of the proposed adoption. The guardian ad litem, Faith Doris Awiti Obondo, also filed the statutory report made under **Section 160(2)** of the **Children Act** in which she noted that the proposed adoption of the child by the Applicants would be in the best interests of the child.

All the statutory reports that have been filed in respect of the proposed adoption of the child by the Applicants have recommended that this Court allows the joint Applicants to adopt the child. This Court has evaluated the facts of this adoption. This is a local adoption. It is evident that the Applicants have 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. This Court has satisfied itself that the Applicants are 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 Services established that the Applicants have the financial and emotional capability to provide for the upkeep and education of the child. This Court observed the Applicants with the child in Court and it was evident that in the period that the Applicants have had the custody of the child, the child has bonded well with them. The child considers the Applicants to be her parents.

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 Applicants. Hence, this Court allows the Applicants’ application. The Applicants, P M N and R WK, are hereby allowed to adopt Baby Sarah Elizabeth. Henceforth, the child shall be known as M W M. Her date of birth shall be 24th November 2012. Her place of birth shall be Kajiado District. She is presumed to be a citizen of Kenya by birth. S G M and his wife H W N shall be the legal guardians of the child should any 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.

DELIVERED AND SIGNED IN OPEN COURT AT NAIROBI THIS 7TH DAY OF MARCH, 2016

M.W. MUIGAI

JUDGE

In the presence of:

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