

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 133 OF 2015

IN THE MATTER OF THE CHILDREN ACT, 2001

AND

IN THE MATTER OF BABY RA

MM1ST APPLICANT

SAM2ND APPLICANT

JUDGMENT

The Applicants, MM (“the 1st Applicant”) and SAM (“the 2nd Applicant”), seek by their application to be allowed by this Court to adopt Baby RA (hereafter “the child”). The Applicants are husband and wife. They celebrated their marriage on 4th June 2005 at the Kenya Assemblies of God Church in Nairobi under the **African Christian Marriage and Divorce Act** (*now repealed*). The 1st Applicant is an architect while the 2nd Applicant is a pharmacist. Both Applicants live together in Nairobi. The Applicants have not been blessed with any children due to medical reasons. They have however previously adopted another child through an adoption order issued by this court on 21st May 2010. They wish to adopt another child so that their son can have a sibling.

The child who is the subject of the present adoption proceedings is presumed to have been born on 13th July 2014. He was found abandoned in Githurai Kimbo area near Kiu River within Nairobi County on 21st July 2014. A report on the abandonment was made on the same day at Githurai Kimbo Police Station. The child was placed with New Life Home Trust for care and protection. 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 28th January 2015 vide **P&C No 17/2005**. He was placed in the custody of the Applicants on 7th February 2015 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 Githurai Kimbo Police Station, no one has come forward to claim the child. A report to that effect dated 23rd January 2015 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 Applicants. 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. 001599 and the same is dated 6th February 2015.

In an application filed on 21st May 2015, the Applicants sought among others, orders from this Court that JKM 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 DMM and SGW as the child’s legal guardians. They further sought for an order that upon adoption the child be known as JMM. On 10th July 2015, this Court issued an order appointing JKM 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, JKM, 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 his 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, MM and SAM, are hereby allowed to adopt Baby R A. Henceforth, the child shall be known as JMM. His date of birth shall be 13th July 2014. His place of birth shall be Nairobi, Kenya. He is presumed to be a citizen of Kenya by birth. DMM and SGW the Appellants' family friends 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.

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

M.W. MUIGAI

JUDGE

In the presence of: