

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO 267 OF 2013

IN THE MATTER OF THE CHILDREN ACT

AND

IN THE MATTER OF BABY H M

J M T1ST APPLICANT

C P W M2ND APPLICANT

JUDGMENT

By an action brought by way of originating summons, J M T, hereafter “the 1st Applicant”, and C P W M, hereafter “the 2nd Applicant”, seek to be allowed by this Court to adopt Baby H M, hereafter “the child”. The Applicants are husband and wife who celebrated their marriage in 1999. The 1st Applicant is currently employed as an accountant while the 2nd Applicant is a self-employed business lady. Both Applicants live together in [particulars withheld]. Their marriage has not been blessed with any biological children of their own, but they are determined to have a child and thus have opted to explore the alternative of adoption. They have also expressed a desire to give back to society by helping a needy child.

The child who is the subject of these adoption proceedings was found abandoned at 6.45 a.m. on 23rd February 2012 in Nakuru. The child was rescued by a Good Samaritan who took him to the Nakuru police station. A report on the matter of the abandoned child was made at Nakuru Police Station, and the same was recorded vide OB No [particulars withheld]. The child was then referred to Africa Gospel Church Baby Centre in Nakuru, a children’s home, for care and protection. The Children’s Court at Nakuru, in accordance with **Section 119** of the **Children Act**, committed the child to the said children’s home on 28th February 2012 vide **P&C No. 284/2012**.

The child was placed in the custody of the Applicants on 1st February 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 the OCS Nakuru Police Station dated 4th September 2012, the child in this matter remains unclaimed. In that regard, this Court can dispense with the consent of the child’s biological parents to the proposed adoption of the child by the Applicants since their identity is unknown. Kenya Children’s Homes 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. 0867 and the same is dated 18th September 2012.

The Applicants filed an application for adoption on 8th November 2013 seeking, among others, orders from this Court that S K N 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 I M T, the 1st Applicant’s brother, as the child’s legal guardian. They further sought for an order that upon adoption the child be known as V T M. On 3rd September 2014, this Court issued an order appointing S K N 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 was heard, Kenya Children's Homes Adoption Society prepared and filed in Court a report regarding the proposed adoption of the child by both Applicants. It was concluded by the said adoption society that the Applicants are suitable to adopt the child. Another report concerning the Applicants' proposed adoption of the child by the Applicants was prepared by the Director of Children's Services, and this report was similarly in support of the proposed adoption. The guardian ad litem, S K N, 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 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 carefully evaluated the facts of this proposed adoption. Considering that the instant case entails a local adoption, it is evident that the Applicants have complied with all the legal requirements for the adoption of the child. The consent of the child's biological parents was dispensed with since the child was abandoned at birth, and his biological parents could not be traced to give their consent. This Court has taken the view that the Applicants are able to take on the parental responsibility over the child.

The home visits by the guardian ad litem, the Adoption Society and the Director of the Children Services established that the Applicants are a mature couple driven by the desire to have a child and to provide the care possible. It also became clear that there is a selfless underlying motive for this proposed adoption; making a modest contribution to society by taking in a needy child and giving him a place to call home. The unanimous finding of all the statutory reports filed in court is that the Applicants have financial and emotional capability to provide for the of the child's well-being. This Court observed the Applicants with the child in Court and it was evident that the child has bonded well with them, is happy in their company and 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, J M T and C P W M, are hereby allowed to adopt Baby H M. The child shall henceforth be known as V T M. His date of birth shall be 23rd October 2011. His place of birth shall be Nakuru, Kenya. He is therefore presumed to be a Kenyan citizen by birth. I M T, the 1st Applicant's brother, shall be the child's legal guardian 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.

READ AND SIGNED IN OPEN COURT AT NAIROBI THIS 3RD DAY OF JULY, 2015

M. MUIGAI

JUDGE

In the Presence of;

Mr. Owade for the Applicant Holding Brief for Mrs. Mongare