



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**ADOPTION CAUSE NO. 64 OF 2019**

**IN THE MATTER OF THE CHILDREN ACT NO. 8 OF 2001**

**AND**

**IN THE MATTER OF BABY EM alias EM alias UNKNOWN BABY**

**BAJ.....1<sup>ST</sup> APPLICANT**

**BA.....2<sup>ND</sup> APPLICANT**

**JUDGMENT**

1. The Applicants in the Originating Summons dated 5.4.2019, BAJ and B.A (hereafter referred to as the 1<sup>st</sup> and 2<sup>nd</sup> Applicants respectively are seeking authority to adopt Baby EM alias EM alias Unknown Baby and to call her ASOA (hereafter referred to as the child).
2. The 1<sup>st</sup> and 2<sup>nd</sup> Applicants are Adults born on 2.6.1975 and 11.3.1969 respectively. The 1<sup>st</sup> Applicant is a Kenyan Citizen while the 2<sup>nd</sup> Applicant is a Citizen of the Republic of India but resides in Kenya.
3. The 1<sup>st</sup> and 2<sup>nd</sup> Applicants got married on 15.9.2009 at ACK CHURCH in Nairobi.
4. The 1<sup>st</sup> and 2<sup>nd</sup> applicants have one biological son KJA born on 3.2.2013.
5. The 1<sup>st</sup> and 2<sup>nd</sup> Applicants work as independent consultants in real estate and child protection respectively and they have attached their financial statements showing they are financially stable to adopt the child.
6. The 1<sup>st</sup> and 2<sup>nd</sup> Applicants have never been charged with any criminal offence and they have attached the police clearance certificates to prove the same.
7. They are also physically and emotionally fit and healthy to parent the child as demonstrated by their medical reports.
8. The Child was born on 1.12.2017 at [Particulars Withheld] in Kitale and was immediately abandoned by the mother after birth.
9. The matter was reported at Kitale Police Station and recorded as OB No. [Particulars Withheld].
10. The Police sought temporary placement for the child at Mercy Rescue Trust Centre through the Trans Nzioa West Children's Officer.
11. The Child was formally committed to Mercy Rescue Trust Centre by the Kitale Children's Court vide Care and Protection Case No. 18 of 2018 on 15.2.2018.
12. Police wrote two letters the first dated 4.1.2018 and the final letter dated 11.6.2018 confirming that efforts to trace the parents of the child bore no fruits.
13. The Child was declared free for adoption by Change Trust Adoption Society on 21.7.2018 vide Certificate No. [Particulars Withheld] under **Section 159(1) (a) (i)** of the Children Act.
14. Reports were filed by Change Trust Adoption Society, the Director Children's Services and the Guardian Ad Litem which are all favourable.

15. The 2<sup>nd</sup> Applicant is a Citizen and this is not an International Adoption as the 1<sup>st</sup> and 2<sup>nd</sup> Applicant are a married couple and the 1<sup>st</sup> applicant is a Kenyan Citizen.

16. Finally, in deciding this matter I am obliged to adhere to **Section 4(2)** of the **Children Act 2001**, which provides:

*“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”*

17. I find that the 1<sup>st</sup> and 2<sup>nd</sup> Applicants have met the legal threshold for adoption of the child and the Originating Summons dated 5.4.2019 is allowed in the following terms:

**(i) THAT the Applicants BAJ and BA be and are hereby authorized to adopt Baby EM alias E. M.**

**(ii) THAT the child shall be known as ASOA.**

**(iii) THAT the date of Birth of the child shall be 1.12.2017**

**(iv) THAT the child shall be presumed to be a Kenyan Citizen.**

**(v) THAT the Registrar General be and is hereby directed to enter this adoption order in the adopted children register.**

**(vi) THAT the Director Immigration be and is hereby authorized to issue the child with a Kenyan passport.**

**(vii) THAT CKD be and is hereby appointed legal guardian of the child in case of incapacity of the Applicants before the child attains the age of the majority.**

**(viii) THAT the guardian Ad litem be and is hereby discharged.**

**DELIVERED, DATED AND SIGNED IN OPEN COURT THIS 6<sup>TH</sup> DAY OF MARCH, 2020.**

**ASENATH ONGERI**

**JUDGE OF THE HIGH COURT OF KENYA, NAIROBI.**