



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYERI**  
**ADOPTION CAUSE NUMBER 30F 2018**

**IN THE MATTER OF ADOPTION OF**

**O. N.....CHILD**

**BY**

**HWK (INTENDED ADOPTIVE MOTHER).....APPLICANT**

**And**

**HMM (INTENDED ADOPTIVE FATHER).....APPLICANT**

**And**

**IN THE MATTER OF SECTION 158 OF THE CHILDREN’S ACT**

**JUDGMENT**

The Applicants HWK and HMM by the Originating Summons dated 24<sup>th</sup> January 2018, supported by:

- Their joint affidavit sworn on 24<sup>th</sup> January 2018
- Report of the *guardian ad litem* HNM of even date but filed on 13<sup>th</sup> April 2018
- Report by Little Angels Network to declare the child free for adoption dated 3<sup>rd</sup> November 2017 which contains: the Certificate of Declaring a child free for adoption S/No (particulars withheld), Admission to the abandoned baby centre at Dagorretti Children’s Centre of baby O N for care and protection on 23<sup>rd</sup> December (particulars withheld), letter from K (particulars withheld) Police station referring the rescued child to the CCI, the District Children Officer’s report to the Children’s court recommending the committal of the child to the CCI, Committal order in P&C no 220 of 2013 dated 2<sup>nd</sup> September 2013 committing the infant to the CCI for three years; discharge sheet from the CCI to the guardians/ intended adoptive parents on 17<sup>th</sup> August 2015 together with a care agreement, a certificate of birth for the infant registered on 19<sup>th</sup> August 2014 showing that the child was born on 23<sup>rd</sup> August 2012 and a pre placement report by Little Angels Network on the two intended adoptive parents.

The Pre placement report contains the personal histories of the couple, their socio-economic background, medical and police reports, evidence of income and financial stability, the consents of two guardians undertaking to take up parental responsibility for the child should the adoption order be granted, and in the event that the adoptive parents are rendered incapable of their parental responsibilities.

The Applicants are a Christian couple aged 56 and 55 respectively and solemnized their marriage in 2014 having married under Kikuyu customary law three years earlier. They are both teachers, she running her own kindergarten, and he, working for the Teacher’s Service Commission. The Report by the Department of Children’s Services indicates that they have not been able to have a child of their own for medical reasons.

According to the documents from the Adoption Society and the Social Inquiry Reports by the Department of Children Services filed on 12<sup>th</sup> September 2018, they estimated date of birth to be around 29<sup>th</sup> August 2012. The child was abandoned within K (particulars withheld) area in Nairobi. Good Samaritans rescued him and took him to K (particulars withheld) Police Station. The report was booked at the said station vided O.B. No.[Particulars withheld]. The rest of the history is set out hereinabove.

The child has remained in the continuous custody and care of the applicants since 17<sup>th</sup> August 2015.

I heard the applicants and the guardian on 5<sup>th</sup> November 2018. From their evidence and the supporting documents filed herein, the adoptive parents proved their suitability to adopt the child. All the statutory reports filed in respect of the proposed adoption found the applicants to be suitable persons to parent of the child and recommended that they be allowed to adopt the child.

The Reports filed on 12<sup>th</sup> September 2018 by the DCS and the Guardians are the most recent. They both confirmed the position of the previous reports, the child having now lived with the applicants for about three years. The Guardians committed to their responsibilities over the child.

The Applicants have fulfilled all the legal requirements relating to the adoption of the child.

I have considered each of the home visit reports by Little Angels Network the Director Children's Services. These have established that the child has lived with the adoptive parents since 17<sup>th</sup> August 2015 and they have bonded well, the applicants have provided for the child both emotionally and financially, and have the capacity and ability to provide for his upkeep and education. This child has found a home with a family which loves and cares for him. The applicants are aware of the power of the adoption order which will give them a child, over whom they will exercise all parental responsibilities and the rights and duties of a parent. That the adoption order once given shall be final and binding during the lifetime of the child, and that the child shall have the right to inherit their property. That they cannot give up their responsibility owing to any subsequent unforeseen behaviour and other challenges in the child.

It goes without saying that the need for parental care, love and protection is basic for every child. Through its fulfillment the child's chances of survival, growth fulfillment and the achievement of its full potential are assured. A family, and not an institution is the proper place for the child. That is why we have found it necessary to legislate the right to get it and the duty and obligation to provide it. Every child has a right to the protection and care of his or her parents according to the Children Act, Cap 141 Laws of Kenya. The Constitution at Article 53 provides for the rights of the child to include the right to parental care and protection. The Children Act provides an exposition of these rights, at section 6(1) the right to parental care; and it is clear from the definition of parental rights and responsibilities at section 23, the first call for the realisation of these rights is within a family setting. It states:

*(1) In this Act, “parental responsibility” means all the duties, rights, powers,*

*responsibilities and authority which by law a parent of a child has in relation to the child and the child's property in a manner consistent with the evolving capacities of the child.*

*(2) The duties referred to in subsection (1) include in particular—*

*(a) the duty to maintain the child and in particular to provide him with—*

*(i) adequate diet;*

*(ii) shelter;*

*(iii) clothing;*

*(iv) medical care including immunisation; and*

*(v) education and guidance;*

*(b) the duty to protect the child from neglect, discrimination and abuse;*

*(c) the right to—*

*(i) give parental guidance in religious, moral, social, cultural and other values;*

*(ii) determine the name of the child;*

*(iii) appoint a guardian in respect of the child;*

*(iv) receive, recover, administer and otherwise deal with the property of the child for the benefit and in the best interests of the child;*

*(v) arrange or restrict the emigration of the child from Kenya;*

*(vi) upon the death of the child, to arrange for the burial or cremation of the child.*

This demonstrates why, where parental care is not available in its natural setting, we have provided for it in the Act as alternative care, fostering, guardianship and ultimately, adoption. This child herein has so far been able to enjoy those rights ensuring his right to survival and development. Hence it is in his best interests that an adoption order do issue in favour of the applicants.

To that end, the following orders are apt;

1. The application for adoption is granted and intended adoptive parents are hereby allowed to adopt the child O N
2. His name shall be O B M.
3. The Registrar General is directed to duly enter this order in the Adoption Children Register
4. H W K and H N M are confirmed as guardians of the child
5. The guardian ad litem is hereby discharged.

**Dated, delivered and signed at Nyeri this 25<sup>th</sup> day of January 2019.**

**Mumbua T Matheka**

**Judge**

In the presence of:

Ms Mukuha for applicants

Jerusha-Court Assistant

**Mumbua T Matheka**

**Judge**

**25/1/19**