



**REPUBLIC OF KENYA**

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

**ADOPTION CAUSE NO. 150 OF 2018**

**IN THE MATTER OF THE CHILDREN'S ACT, 2001**

**AND**

**IN THE MATTER OF BABY JG (CHILD)**

**AND**

**HWO.....1<sup>st</sup> APPLICANT**

**EMM.....2<sup>nd</sup> APPLICANT**

**JUDGEMENT**

1. The applicants herein **HWO** and **EMM** (herein referred to as the Applicants) approached this court by way of Originating Summons dated 8<sup>th</sup> October, 2018 seeking the following orders:

- a. That the minor be declared a Kenyan citizen by birth.**
- a. That the applicants HWO and EMM be authorised and/ or allowed to adopt BABY JG.**
- b. That the child be declared a Kenyan citizen**
- c. That the child be renamed as DLW.**
- d. That the child be presumed to be a Kenyan Citizen by birth.**
- e. That the guardian ad litem be discharged; and LJW and IML appointed as the child's Legal Guardians in the event that the Applicants herein are incapacitated or in any way unable to discharge their parental obligations.**
- f. That the Registrar general do make appropriate entries in the Adopted Children Register and issue a Certificate to that effect.**
- g. THAT this court do issue further orders as are in the interest of justic**

2. The Applicants aged 35 and 37 years respectively are Kenyan Citizens who got married on 27<sup>th</sup> April 2013 under Cap 151 now repealed on. A marriage Certificate S/No.[xxxx] was attached as proof.

3. The Applicants stated that they have movable and immovable assets as evidenced by their bank statements and Title deeds attached. The first applicant is a court process server who works with [particulars withheld] while the wife is a house wife. Their monthly income is approximately Kshs 250,000.

4. It is their averment that due to the 2<sup>nd</sup> applicant's medical complications, they have been unable to get a child of their own. Therefore, the desire to adopt has been prompted by the need to have a complete home, have somebody to keep them company, provide for a needy child and also provide parenthood to the baby.

5. The child who is presumed to have been born on 12<sup>th</sup> September 2017, was found abandoned on 5<sup>th</sup> October 2017 when he was about three weeks old at Machakos Township. His parents disappeared and efforts to trace them have been futile.

6. The minor was rescued and referred to Mahali Pa Maisha Infant Rescue Centre under OB NO. [xxxx] on 11<sup>th</sup> October 2017.

7. He was then committed to MAHALI PA MAISHA on 12<sup>TH</sup> October 2017 vide protection and care case no 47 of 2017. On the 13<sup>th</sup> April 2018, Machakos Police Station confirmed that nobody had shown up to claim the child.

8. The child was freed for adoption by Buckner Kenya Adoption Services case committee which declared the child free for adoption on the 27<sup>th</sup> April, 2018 under **Section 159(1) (a) (i)** of the **Children Act**

which states that:

***“Abandonment may be presumed if the child appears to have been abandoned at birth or if the person or institution having care and protection of the child has neither seen nor heard from a parent or guardian of the child for a period of at least six months.”***

9. On 31<sup>st</sup> January 2019, GVC was appointed as the Guardian Ad litem and the Director Children Services directed to file an assessment and evaluation report within 45 days. Prior to the hearing of this application, the Director Children Services, Buckner Kenya Adoption Society and the guardian Ad litem, filed their respective reports thus recommending the adoption. They described the applicants as people of means, financially stable, Christians and responsible with no criminal records.

10. In preparing their assessment reports for adoption, the stake holders relied on the following documents:

a. The Initial Police Letter dated 17<sup>th</sup> October 2017.

b. A Committal Report dated 11<sup>th</sup> October 2017.

c. An Admission Form into Mahali Pa Maisha Infant Rescue Centre and a child's photo upon admission.

d. A bundle of Documents regarding the child's health, consisting of the child's Health Card, Growth Record and Progression Form.

e. The Final Police Letter dated 13<sup>th</sup> April 2018.

f. A report to declare a Child Free for Adoption by Buckner Kenya Adoption Services of 27<sup>TH</sup> April 2018.

g. A copy of Certificate of Freeing a Child for Adoption Serial Nmbere 0283 issued on 27<sup>th</sup> April 2018.

11. During the hearing, the applicants expressed their desire to be allowed to adopt the baby whom they fondly referred to as their son. They stated that they had understood the consequences of the

adoption, the rights of the child and that it was permanent.

12. I have considered the originating summons herein and the supporting documents. There is no doubt that the applicants are Kenyan citizens whose age is well within 25 and 65 years which is the age bracket recommended for an adopting parent in compliance with Section 158 of the Children Act. As stated, the child was abandoned in the bush by an unknown person and every effort to trace his relatives have been futile. Accordingly, consent is dispensed with pursuant to section 159 of the Children Act.

13. Article 14(4) of the Constitution provides that, any child found in Kenya who is, or appears to be, less than eight years of age, and whose nationality and parents are not known, is presumed to be a citizen by birth. Since both the applicants and the baby are Kenyans, this adoption is qualified to be a local adoption. From the stake holders' reports, my own assessment and interrogation of the applicants, I am satisfied that the applicants have met the necessary legal requirements to adopt the baby.

14. In the matter of L.O (CHILD)[2012]eKLR the court had this to say regarding the obligations of an adopting parent:

***“For the avoidance of doubt, the rights and duties of the biological parents of the child are hereby extinguished and all the parental rights, duties, obligations and liabilities of the child, J. M. M. , now vest in and shall be exercisable by and enforceable against the Applicants as the adopter parents as if the child were born in wedlock to the adopter parents and the child, to all intents and purposes, now stands to the adopter parents as a child born in wedlock and both adopter parents shall henceforth be the lawful father and mother of the child.***

15. Finally, in deciding the application, the court is duty bound to make a finding as to whether the adoption is in the best interest of the baby. To arrive at this finding, I am guided by Article 53(2) of the Constitution and **Section 4(2) of the Children Act 2011**, 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.***

16. Considering that the child was abandoned and nobody has come forward to claim him, and further taking into account that the child has been with the applicants since placement, it will not be in his best interest that they be separated. The baby has fully bonded with the

applicants who have shown immense love towards him as caring and responsible parents. I see no need in rejecting the application. The baby is need of parental love, basic provision like food, education, medical care, shelter and clothing all which the applicants are capable of providing. I am satisfied that the adoption shall be in the best interest of the child in the circumstances and therefore do allow the same with orders as that;

- i. The consents of the biological parents of the child known as **J G** are hereby dispensed with.
- ii. The Applicants are authorized to adopt the child currently identified and known as **JG**.
- iii. The child shall henceforth be known as **DLW**
- iv. The Registrar General shall enter this adoption in the Adoption Register.
- v. That the minor be declared a citizen by Birth.
- vi. That an order of adoption be issued to the Applicants herein.
- vii. The court hereby appoints **LJW** and **IML**. as the legal guardians of the minor child.
- vii. The guardian ad litem, **GVC** be discharged forthwith.

**DATED DELIVERED AND SIGNED THIS 25<sup>TH</sup> DAY OF JULY 2019**

**J.N. ONYIEGO**

**JUDGE**