



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**FAMILY DIVISION**  
**ADOPTION CAUSE NO. 119 OF 2017**

**IN THE MATTER OF THE CHILDREN ACT 2001**

**AND**

**IN THE MATTER OF ADOPTION OF CHILD OO**

**AND**

**IN THE MATTER OF AN APPLICATION FOR ADOPTION BY**

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

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

**JUDGMENT**

1. The applicants are a couple aged 45 and 48, respectively. The first applicant is a Kenyan citizen while the 2<sup>nd</sup> applicant is a Canadian citizen who is domiciled in Kenya, having lived in Kenya for the last sixteen years. The 1<sup>st</sup> applicant is a director [particulars withheld] Limited while the second applicant is a house wife. They got married on 4<sup>th</sup> May 2003 and three children, one biological child (born in 2006) and two other children adopted on 8<sup>th</sup> June 2010 and 2<sup>nd</sup> May 2017. They filed the originating summons on 25<sup>th</sup> August 2017 seeking to be allowed to adopt the male child.

2. Child OO was born on 27<sup>th</sup> October 2012 according to the birth certificate serial number [Particulars withheld] issued at Kiambu District. According to the police letter dated 3<sup>rd</sup> December 2013, the child was found abandoned in a street within Kiambu County by a good Samaritan named James Wamati. The case was recorded vide O.B No.[Particulars withheld]. He was taken to Kiambu Children Office on 23<sup>rd</sup> October 2015 and referred to Jean Petty Legacy Home on the same day for safe custody. The child was formally committed to the care of Jean Petty Legacy Home on 26<sup>th</sup> January 2016 by the Children's Court in Kiambu vide Protection and Care Cause No.2 of 2016. The final police letter by Kiambu Police Station dated 31<sup>st</sup> August 2016 stated that investigations to trace the whereabouts of the parents or relatives had been fruitless. The child was declared free for adoption under **section 156(1)** of the **Children's Act** by Change Trust Adoption Services on 28<sup>th</sup> February 2017 and was placed under the care of the applicants for mandatory bonding prior to adoption. He has been under the continuous care of the applicants since 6<sup>th</sup> April 2017.

3. The court on 8<sup>th</sup> February 2018 appointed G K M as guardian *ad litem* and ordered that he files a report after carrying out a social inquiry on the applicants. A similar report was sought from the Director of Children Services. Both reports were duly filed, and each recommended that the applicants be allowed to adopt the child. The reports found that the applicants were socially, emotionally and financially stable and suitable to adopt the child. It was also found that the child and the applicants had bonded well. The Director of Children Services' report, however, pointed out that there was a moratorium in place prohibiting international adoptions and since the 2<sup>nd</sup> applicant was a Canadian citizen the report left the matter to the discretion of the court to make a ruling that was in the best interests of the child.

4. Although the 2<sup>nd</sup> applicant is a Canadian citizen, it is noted that she is married to a Kenyan citizen and has been staying in Kenya for the last sixteen years. The court further notes her explanation that she has no intention of leaving Kenya. She and her husband have other children. Both adoptions were cleared by the Director of Children Services. The latter adoption was when the moratorium was in place.

5. The court finds that it is in the best interest of the child to be adopted by the applicants. The applicants have demonstrated their ability to

provide a conducive home and family environment in which the child will grow and develop. They will assume all parental rights and obligations of the biological parents of the child once adopted, and shall treat her as if she was borne of them. They have been made aware that once the adoption order is made, it shall be final and binding during the lifetime of the child. The child shall have the right to inherit their property. The applicants shall not be able to give up the child owing to any subsequent unforeseen behaviour or other changes in the child. This court dispenses with the consent of the child's biological parents as the child was found abandoned.

6. Having been satisfied that all the legal requirements for a local adoption under the **Children Act** have been met, the following orders shall issue:-

- a) the applicants KRP and CLKP are hereby allowed to adopt Child OO;
- b) child OO shall henceforth be known as OOKP;
- c) the child's date of birth shall be 27<sup>th</sup> October 2012, and shall be presumed Kenyan by birth having been born at Kiambu in Kenya;
- d) BP and SS are hereby appointed to be the child's legal guardians in the event of death or incapacity of the applicants before he is of full age and fully self-reliant;
- e) the Registrar-General is directed to enter this adoption in the Adopted Children Register;
- f) the Director of Immigration is directed to issue the child with a Kenyan passport; and
- g) the guardian *ad litem* is hereby discharged.

**DATED and SIGNED at NAIROBI this 27<sup>TH</sup> day of NOVEMBER 2018.**

**A.O. MUCHELULE**

**JUDGE**

**DATED and DELIVERED at NAIROBI this 29<sup>TH</sup> NOVEMBER 2018.**

**ALI-ARONI**

**JUDGE**