



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**ADOPTION CAUSE NUMBER 4 OF 2017**

**IN THE MATTER OF ADOPTION OF**

**BABY J ALIAS A M.....MINOR**

**BY**

**S W N (INTENDED ADOPTIVE MOTHER) .....APPLICANT**

**J U D G M E N T**

The Applicant, the INTENDED ADOPTIVE MOTHER S W N has sought, by the Originating Summons dated 19<sup>th</sup> May 2017, supported by her affidavit in support and a statement of the same date, orders, allowing her to adopt BABY J alias A M (hereinafter the baby/ child).

The Applicant is a single lady aged 28 years old as at the time of hearing. She was customarily married for two years between 2008-2010. She parted ways with the husband since then and remains single. She is a business woman running her own retail shop. She stated in her testimony that she would get children and they would pass away. The Report by the Department of Children's Services indicates that the Applicant conceived 4 times and each time she developed high blood pressure. She consequently gave birth to 4 pre-term babies through caesarian section procedure and the babies passed away immediately after delivery. Further she underwent 6 operations on her uterus. This gave her stress and she resorted to counseling. She stated that she loves children very much yet she lacks the ability to get a biological one and hence opted to adopt instead.

According to the Social Inquiry Reports by the Department of Children Services filed on 21<sup>st</sup> May 2018, the date on which the child in this matter was born is not known but she is approximately 3 years old. She was abandoned at a residential plot in R Nairobi area. A good Samaritan rescued the child and took her to R Police Station. The report was booked at the said station vided O.B. No. [Particular withheld]. The child was rescued to New Life Home Trust on 10<sup>th</sup> February, 2016 under protection and care number (P&C) /2016 at Nairobi Children's Court at Milimani.

On the 1<sup>st</sup> September, 2016, the applicant herein and New Life Home Trust entered in a Care Agreement for the baby. Buckner Kenya Adoption Services declared the child free for adoption vide the certificate dated 30<sup>th</sup> November, 2015.

The child remained in continuous custody and care of the applicants since 2016.

In an application filed on 19<sup>th</sup> May 2017 the Applicant sought orders for the appointment of child's *guardian ad litem* and that the Director of Children's Services be ordered to investigate the suitability of the Applicant to adopt the child and submit their report. On 22<sup>nd</sup> January 2018 this Court issued an order appointing the *guardian ad litem* and further directing the Director of Children's Services to prepare a home study report in respect of the applicants and the child for submission to the court.

The matter was heard on 19<sup>th</sup> September, 2018. I heard the adoptive parent and the legal guardian, the Applicant's father, Mr. J N W. The adoptive parent proved her suitability to adopt the child by stating that she is a lady of means and that her parents are also supportive of her and her child. She has plans to put up a house for herself and the baby. They currently reside with her parents at her maiden home in Mahiga. The adoptive mother's father testified that the decision to adopt is supported by the whole family; he is the legal guardian of the child and that he would like the child to be named after his wife, H W in accordance with their culture.

All the statutory reports filed in respect of the proposed adoption found the applicant a suitable person to be the parent of the child and recommended that she be allowed to adopt the child.

The Report filed on 21<sup>st</sup> May 2018 by the DCS is the most recent. It confirmed the position of the previous reports, the child having now

lived with the applicants for about three years.

The application is with respect to a local adoption. The Applicant has fulfilled all the legal requirements relating to the adoption of the child.

I have considered each of the home visit reports by Change Trust and the one by the Children officers representing the Director Children's Services. These have established that the child has lived with the adoptive mother and her family since September 2016, and they have bonded well, the applicant has been able to provide for the child both emotionally and financially, and has the capacity and ability to provide for this baby her upkeep and education. This child has found a home with a family which loves and cares for her. The applicant agrees that by adoption, she will assume all parental responsibilities over the child. She will treat the child as her own. She is aware that once the adoption order is given it shall be final and binding during the lifetime of the child, and that the child shall have the right to inherit her property. The applicant cannot give up her responsibility owing to any subsequent unforeseen behaviour and other challenges in the child. The Applicant is a young capable lady backed by a stable family with the potential of giving this baby a good upbringing.

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 be the protection and care of his or her parents according to the Children Act. The Constitution at Article 53 provides for the rights of the child including the right to parental care and protection. The Children Act provides an exposition of these rights and it is clear from the definition of parental responsibilities at section 23, the first call for the realization of these rights is within a family setting. That is why, where it 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 her right to survival and development.

From the foregoing I am persuaded that it would be in the best interests of the child to allow this application for adoption.

To that end, the following orders are apt;

1. The application for adoption is granted and intended adoptive parent is hereby allowed to adopt Baby J alia A M
2. Her date of birth is the 1<sup>st</sup> May, 2015 as per the Report by the Department of Children Services. 3. The place of birth shall be as per the certificate of birth
4. Her name shall be H W.
5. The Registrar General is directed to duly enter this order in the Adoption Children Register
6. The guardian ad litem is hereby discharged.

**Dated delivered and signed at Nyeri this 22<sup>nd</sup> day of November 2018.**

**Mumbua T. Matheka**

**Judge**

In the presence of:

Court Assistant: Kinyua

No appearance for parties/counsel

**Mumbua T. Matheka**

**Judge**

**22/11/18**