



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**ADOPTION CAUSE NO. 49 OF 2018**

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

**AND**

**IN THE MATTER OF BABY OB ALIAS UB**

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

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

**JUDGMENT**

The Applicants, YAG (“the 1<sup>st</sup> Applicant”) and JWC (“the 2<sup>nd</sup> Applicant”), seek by their application to be allowed by this Court to adopt Baby OB alias UB (hereafter “the child”). The Applicants are husband and wife. They celebrated their marriage on 13<sup>th</sup> September 2008 under the **African Christian Marriage and Divorce Act (now repealed)** as shown by marriage certificate number 458234.

The 1<sup>st</sup> Applicant is Civil Servant based in Loitoktok while the 2<sup>nd</sup> Applicant is self –employed and a housewife. Both Applicants live together in Loitoktok. They have not been blessed with children of their own due to medical reasons. They therefore wish to adopt a child.

The child who is the subject of the present adoption proceedings is presumed to have been born on 3<sup>rd</sup> September 2015. He was found abandoned at the roadside near Hopewell within Naivasha town On 30<sup>th</sup> October 2015, the child was admitted at Naivasha Hospital for observation and was discharged on 3<sup>rd</sup> November 2015.

By letter dated 3<sup>rd</sup> November 2015, Naivasha Police Station confirmed that the child was rescued by a good Samaritan at Hopewell in Naivasha. The matter was recorded in OB Number [Particulars withheld]. The Police Station also requested Limuru Children Home to provide temporary care and protection for the child while they conducted investigations.

The Limuru Children Centre confirmed that the child OB was officially admitted to their home on 3<sup>rd</sup> November 2015. The child was committed officially to the home through Protection and Care Case No 5 of 2016 at Naivasha Children Court for 3 years.

By letter dated 8<sup>th</sup> June 2016, Tigoni Police Station wrote final letter confirming that no one came to claim the child and efforts to trace biological parents and/or relatives of the child were not fruitful.

By letter of 31<sup>st</sup> October 2017 from Sub County Children Officer J.K.Chege that the Good Samaritan one Peter Kimani of Mobile 0714\*\*\*\*\* refused to come and write his statement and instead disclosed on phone that he was on his way to drop a client on a bodaboda and he saw the abandoned child and took the child to the Naivasha Police Station.

The child remained unclaimed for more than 6 months and therefore under **Section 159 (1) (a) (i) of Children Act** was applied. The Case Committee of little Angels Network deliberated on the matter on 29<sup>th</sup> July 2016 and declared the Child OB alias UB free for adoption vide Certificate Number [Particulars withheld pursuant to Section 156(1) Children Act 2001.

The child was placed in the custody of the Applicants on 23<sup>rd</sup> June 2017 for mandatory bonding prior to adoption. He has since then been in the continuous custody and care of the Applicants. According to correspondence from relevant police authorities at Tigoni Police Station, no one has come forward to claim the child. A report to that effect has been filed in Court. Thus, this Court dispenses with the consent of the child’s biological parents to the proposed adoption of the child by the Applicants.

In an application filed on 16<sup>th</sup> April 2018, the Applicants sought among others, orders from this Court that M W M be appointed as the child's guardian ad litem to investigate and file a report, and that the Director of Children Services be ordered to investigate the suitability of the Applicants to adopt the child and submit a report. On 28th June 2018, this Court issued an order appointing M W M as the child's guardian ad litem, and further directing the guardian ad litem and the Director of Children Services to file their respective reports in Court.

The Applicants also sought to have the Court appoint DG, the 1<sup>st</sup> Applicant's brother as the child's legal guardian. They further sought for an order that upon adoption the child be known as King Kohan Irasimio.

Pursuant to **Section 156(1)** of the **Children Act**, before this matter came up for hearing, Little Angels Network, the relevant adoption society, on 28<sup>th</sup> June 2018, prepared and filed in Court a favourable report in respect of the proposed adoption of the child by both Applicants. Another report in respect of the proposed adoption of the child by the Applicants was prepared by the Director of Children Services, filed on 1<sup>st</sup> October 2018 and this report was similarly in favour of the proposed adoption. The guardian ad litem, M W M, also filed on 19<sup>th</sup> October 2018, the statutory report made under **Section 160(2)** of the **Children Act** in which she noted that the proposed adoption of the child by the Applicants would be in the best interests of the child.

All the statutory reports that have been filed in respect of the proposed adoption of the child by the Applicants have recommended that this Court allows the joint Applicants to adopt the child. This Court has evaluated the facts of this adoption. This is a local adoption. It is evident that the Applicants have fulfilled all the legal requirements relative to the adoption of the child. The consent of the biological parents of the child was dispensed with since the child was abandoned at birth. This Court has satisfied itself that the Applicants are qualified and able to take care of the child. The home visits by the guardian ad litem, the adoption society and the Director of the Children Services established that the Applicants have the financial and emotional capability to provide for the upkeep and education of the child. This Court observed the Applicants with the child in Court and it was evident that in the period that the Applicants have had the custody of the child, the child has bonded well with them. The child considers the Applicants to be his parents.

On the basis of a careful examination of the documents presented before me as well as the observations made therein, this Court has formed the opinion that it would be in the best interest of the child to be adopted by the Applicants. Hence, this Court allows the Applicants' application. The Applicants, YAG and JWC, are hereby allowed to adopt Baby OB aka UB. Henceforth, the child shall be known as KIK alias KKI. His date of birth shall be 3<sup>rd</sup> September 2015. He is presumed to be a citizen of Kenya by birth. DG the 1<sup>st</sup> Applicant's brother, shall be the legal guardian of the child should such eventuality arise. This Court directs the Registrar General to duly enter this order in the Adoption Register. The guardian ad litem is hereby discharged. It is so ordered.

**DELIVERED DATED & SIGNED IN OPEN COURT AT NAIROBI THIS 20<sup>TH</sup> DAY OF DECEMBER 2018.**

**M.W.MUIGAI**

**JUDGE –FAMILY DIVISION –HIGH COURT**