



**REPUBLIC OF KENYA**

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

**ADOPTION CAUSE NO. 111 OF 2016**

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

**AND**

**IN THE MATTER OF THE ADOPTION OF W F aka W M aka W M aka W F aka D F**

**BY**

**J M W..... 1<sup>ST</sup> APPLICANT**

**A W M.....2<sup>ND</sup> APPLICANT**

**JUDGMENT**

The Applicants herein sought by their Amended Originating Summons, Statement and Affidavit in support, orders allowing them to adopt Baby **W M aka W M aka W M aka W F aka D F** (hereinafter the child). The Applicants are 41 and 38 years old respectively married since 2009 but do not have a child of their own , however the 1<sup>st</sup> applicant has one child outside wedlock who is under the care of the maternal grandparents. The Applicants filed financial, health and clearance records that confirm that she will cater for the child's social growth and development.

The child in this matter is presumed to have been born on 9<sup>th</sup> November 2014 and was estimated to be aged one month. A good Samaritan rescued the child abandoned at his gate in Kiritiri-Embu on 9<sup>th</sup> December 2014 who proceeded to report the matter to Kiritiri Police Station vide OB No. 28/9/12/2016.

The child was committed to New Life Children's Home Trust Nyeri on 15<sup>th</sup> January 2015 as a child in need of Care and Protection Case No. 4 of 2015 in accordance with **Section 119 of the Children Act 2001** vide the Children's Court in Nairobi. **The child has not been claimed and no guardians have surfaced since then.**

The child was then placed in the custody of the Applicants for mandatory bonding prior to adoption. She has since then been in their continuous custody and care of the applicant. Change Trust issued a certificate declaring the child free for adoption pursuant to **Section 156(1) of the Children Act**. The said freeing certificate is Serial No. [Particulars Withheld] and the same is dated 29<sup>th</sup> August 2015 **and** filed their report on 10<sup>th</sup> November 2016 and recommended the adoption.

In an amended application filed on 11<sup>th</sup> July 2018 the Applicants sought orders that M W be appointed as the child's guardian *ad litem* and that the Director of Children's Services be ordered to submit a report on the applicants' fitness to adopt the infant.

The guardian *ad litem* filed a report on 3<sup>rd</sup> march 2017 which favoured the proposed adoption of the child by the Applicants. Another report in respect of the proposed adoption of the child by the Applicants was prepared by the Director of Children's Services and filed on 17<sup>th</sup> January 2017. This report was similarly in favor of the proposed adoption. Both reports filed in respect of this proposed adoption have recommended that this Court allows the Applicant to adopt the child.

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 consents of the biological parents of the child are dispensed with in accordance to Section 159(1) (a) of the Children Act, 2001 since the child was abandoned at birth. This Court is satisfied that the Applicant is qualified and able to take care of the child. The home visits by the guardian *ad litem* confirm that the Applicant is indeed capable of providing for the child. The Report from the Department of the Children's Services established that the Applicants have the financial and emotional capability to provide for the upkeep and education of the child. The child has bonded well with the Applicants and the extended family members according to the Guardian *ad litem*'s report. The child has settled in very well and is quite comfortable.

After careful examination of the documents presented, it is the opinion of the court that this Adoption would be in the best interest of the child. Hence, this Court allows the Applicants' application. The Applicants are hereby allowed to adopt Baby **W M aka W M aka W M aka W F aka D F** who **will henceforth be known as D W W (D W W)**. He is presumed to be a Kenyan Citizen by birth. S M and H W G, 1<sup>st</sup> applicant's brother and sister in law are hereby appointed as the legal guardian of the child should any eventuality arise. This Court directs the Registrar General to duly enter this order in the Adoption Children Register. The guardian *ad litem* is hereby discharged.

It is so ordered.

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

**M.W.MUIGAI**

**JUDGE FAMILY DIVISION –HIGH COURT**