



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI**  
**MILIMANI**  
**ADOPTION CAUSE NO. 55 OF 2016**  
**IN THE MATTER OF THE CHILDREN'S ACT, 2001**  
**AND**  
**IN THE MATTER OF THE ADOPTION OF**  
**BABY D M.....MINOR**  
**BY**  
**M N N.....APPLICANT**  
**JUDGMENT**

The Applicant; by way of Amended Originating Summons Application and a Statement in Support dated 22<sup>nd</sup> August 2016 sought Orders that she be allowed to adopt Baby DM; the Minor herein, that LWK be appointed as the guardian *ad-litem* of the Minor for purposes of this Adoption, that the guardian *ad-litem* and the Director of Children Services be Ordered to investigate the Applicant's fitness to adopt and file the requisite reports and that upon making of the adoption order, the Minor be known as DDMR.

The Applicant is an adult Citizen of Kenya. She is Single and was a mother to one son who is now deceased. She is a [particulars withheld] at the Ministry of Environment and Natural Resources. She has no Children of her own due to medical complications after her Son's demise. She wishes to adopt so as to give back to the society by giving a needy Child a home.

The Minor herein is a male Child currently aged 6 years. He is presumed to have been born on 11<sup>th</sup> July 2011 in Kirinyaga County. The Minor was found abandoned at our Lady of Lourdes Hospital Karira parking bay. He was rescued by the Hospital Administration and admitted for medical checkup. The matter was reported to Wang'uru Police Station and recorded vide OB No. [particulars withheld]. He was then admitted to New Life Home Trust, Nyeri on 11<sup>th</sup> August 2011 as evidenced by a copy of the Home's admittance letter and was later on discharged to New Life Home, Nakuru on 7<sup>th</sup> November 2012. The Minor was then committed to the New Life Home Trust Nyeri by the Children's Court in Wang'uru vide **Protection and Care Case No. 55 of 2011** as shown by the Court's committal order.

Wang'uru Police Station, in their letter dated 26<sup>th</sup> November 2012 confirmed that they have not been able to trace the Minor's biological parents. The Home also confirmed that during the Minor's stay, no one went to claim the Child and they never received any information from the Police Department and the Children's Department pertaining to such claims. Accordingly, the Minor was freed for adoption by

KKPI Adoption Society's case committee sitting on 26<sup>th</sup> November 2014 and a freeing certificate of serial no. 443 was issued pursuant to **section 156(1) of the Children's Act, 2001** and **the Adoption Regulations, 2005**. The Minor stayed at the Home until 12<sup>th</sup> December 2014 when he was placed under the custody and care of the Applicant who has since continued care for the Minor.

LWK was appointed as the guardian ad-litem for purposes of this adoption on 26<sup>th</sup> October 2016 and directed to file her suitability Report in respect to this Adoption. Accordingly, she filed her Report on 15<sup>th</sup> June 2017 wherein she noted that the proposed adoption is in the best interest of the child. From observation, she submitted that the Applicant was indeed capable of taking on parental responsibility as she had bonded with the Child and was ready and willing to care for him as her own. She also confirmed that the Applicant was of good health and that she had a good criminal record.

KKPI Adoption Society filed their Declaration Report on 28<sup>th</sup> July 2016 based on a Home visit and interview conducted at the Applicant's residence in Ruiru. They submitted that the Applicant's social, spiritual and moral standing is satisfactory and that she is socially and financially stable to take care of the Minor. They also submitted that the Applicant is of a clean bill of health and had a good criminal record. It was also noted that her extended family is in full support of the adoption and that they were willing to receive the Minor in their family. In recommending the adoption, they submitted that under special circumstances, the Applicant is the only person available and ready to adopt the Minor and thus the proposed adoption should be allowed as it will be in the best interests of the Minor.

The Department of Children Services also filed their Report pursuant to the Court order dated 26<sup>th</sup> October 2013. From the observations made during their home visit, they stated that the Applicant had adequately provided for the Child and enrolled him in pre-unit at [particulars withheld] where he was said to be performing well. They confirmed that the Applicant was of a good criminal record as evidenced by her certificate of good conduct and that she was financially, socially and emotionally capable to take care of the Child. They also noted a good bond between the Applicant and the Minor and thus recommended the Adoption.

## **DETERMINATION**

This Court has evaluated the facts of this local adoption. It is evident that the Applicant has fulfilled all the legal requirements relative to the adoption of the child in light of **Section 156(1) of the Children's Act, 2001**. All the necessary Reports required for this Adoption have been filed and they are favorable. The consents of the biological parents of the child are hereby dispensed pursuant to **Section 159 of the Children's Act, 2001** with since the child was abandoned at birth, and her biological parents could not be traced to give their consent.

In light of Section **158(2) (b) of the Children's Act, 2001** which provides:

***“...An adoption order shall not be made in favour of the following persons unless the court is satisfied that there are special circumstances that justify the making of an adoption order***

***(a) ...***

***(b) A sole female applicant in respect of a male child;***

***(c) ...***

***(d) ...”***

This Court is satisfied by the special circumstances espoused by the Reports filed being that; the Applicant had a biological son born in 1988 who is now deceased, that the Child was abandoned at birth and that the Applicant is ready and willing to adopt the Minor and provide him with a home. Moreover, the Minor has bonded with the Applicant and the Reports favor the adoption.

Accordingly, this Court has satisfied itself that the Applicant is qualified and able to take care of the child as submitted in the Reports filed. It was evident that in the period that the Applicant had custody of the child, he bonded well with her and considered her as his mother. From the foregoing and in light of the special circumstances alluded to, this Court is satisfied that it would be in the best interest of the child to be adopted by the Applicant. Hence, this Court orders that; the Applicant MNN is hereby allowed to adopt BABY DM. Henceforth, the child shall be known as DDMR and he shall be presumed to be a citizen of Kenya by birth born on 11<sup>th</sup> July 2011 in Kirinyaga County. EWK; friend to the Applicant, 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.**

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 29<sup>TH</sup> DAY OF SEPTEMBER, 2017.**

**M.W.MUIGAI**

**JUDGE**