



**REPUBLIC OF KENYA**

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

**ADOPTION CAUSE NO. 253 OF 2015**

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

**AND**

**IN THE MATTER OF BABY C W AKA E J M**

**A M M N.....1<sup>ST</sup> APPLICANT**

**G K K .....2<sup>ND</sup> APPLICANT**

**JUDGMENT**

The Applicants, A M M N (“the 1<sup>st</sup> Applicant”) and G K K (“the 2<sup>nd</sup> Applicant”), seek by their application to be allowed by this Court to adopt Baby C W (hereafter “the child”) by way of their Originating Summons Application dated 12<sup>th</sup> October 2015. The Applicants also sought orders that C N N and S K be appointed as the child’s legal guardians and that the Director of Children’s Services be ordered to investigate the suitability of the Applicants to adopt the child and submit a report.

The Applicants are husband and wife. They celebrated their marriage on 6<sup>th</sup> December, 2003 under the **African Christian Marriage and Divorce Act** (*now repealed*). The 1<sup>st</sup> Applicant is employed at [*particulars*] while the 2<sup>nd</sup> Applicant is employed as a teacher at [*particulars*] School. The Applicants have not been blessed with any biological children due to medical reasons. Thus, they wish to adopt a child.

The child who is the subject of the present adoption proceedings is presumed to have been born on 11<sup>th</sup> September, 2012. She was found abandoned at quarry area in Kayole on 11<sup>th</sup> September, 2012 by a good Samaritan. A report on the incident was made to Kayole Police Station and was recorded vide OB No[*particulars withheld*]. The child was referred to Imani Children’s home for temporary care and protection and this is evidenced by the child’s admission form into the said home. The Senior Resident Magistrate Children’s Court sitting at Nairobi, in accordance with **Section 119** of the **Children Act**, then committed the child to the said children’s home on 19<sup>th</sup> April, 2013 vide **P&C No. 93 of 2013**. The child was placed in the custody of the Applicants on 20<sup>th</sup> April, 2014 for mandatory bonding prior to adoption. The child has since then been in the continuous custody and care of the Applicants.

According to correspondence from relevant police authorities at Kayole Police Station, no one has come forward to claim the child. A report to that effect has been filed in Court. The child was declared free for adoption pursuant to **Section 156 (1)** of the **Children Act**, by the adoption society, KKPI and a freeing certificate is No[*particulars withheld*] and dated 26<sup>th</sup> March, 2014 was issued.

On 12<sup>th</sup> January, 2016, this Court issued an order appointing C N N and S K as the child’s guardians *ad litem*, and further directing that they file their report in Court. Accordingly, they filed their statutory report under **Section 160(2)** of the **Children Act** in which they noted that the proposed adoption is in the best interest of the child. From their observation, they submitted that the Applicants are of good criminal record, good health and that they are physically, financially and emotionally capable to take care of the Child herein.

The KKPI Adoption Society also filed a favorable report in respect of the proposed adoption of the child by the Applicants. They submitted that the Applicants' social, spiritual and moral standing is satisfactory and that they have read the Explanatory Memorandum for Adopters and are willing to abide by the Adoption implications. They also stated that the Applicants' were assessed by their case committee and found suitable to adopt the Child.

The Director of Children also filed their Report pursuant to the Court order date d12th January 2016. From the observations made during their home study visit on 7<sup>th</sup> April 2016, they stated that the Applicants have adequately provided for the Child and that they have proven capable of taking on parental responsibility. They confirmed that the Applicants were of good criminal record as evidenced by their certificates of good conduct and that they were financially, socially and emotionally capable to take care of the Child. Accordingly, they recommended the Adoption without any reservations.

This Court has evaluated the facts of this local adoption. It is evident that the Applicants have fulfilled all the legal requirements relative to the adoption of the child. All the necessary Reports and consents required for this Adoption have been filed. The consents of the biological parents of the child have been 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. This Court has satisfied itself that the Applicants are qualified and able to take care of the child as submitted in the Reports filed. Further, 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 her. The child considers the Applicants to be her 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 of 12<sup>th</sup> October 2015. The Applicants, A M M N and G K K are hereby allowed to adopt BABY C W. Henceforth, the child shall be known as E J M. She shall be presumed to be a citizen of Kenya by birth born on 11<sup>th</sup> September 2012 in Kayole within Nairobi County. C N N; cousin to the 1<sup>st</sup> Applicant and his wife S K , 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 guardians' *ad litem* are hereby discharged.

**IT IS SO ORDERED.**

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 22ND DAY OF SEPTEMBER 2017.**

**M.W.MUIGAI**

**JUDGE**