



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MACHAKOS**  
**ADOPTION CAUSE NO 2 OF 2017**  
**IN THE MATTER OF BABY J A**  
**Z K N.....APPLICANT**

**JUDGMENT**

The Applicant is single female adult of sound mind, and is a Kenyan national aged 39 years at the date of the application herein. The Applicant wishes to adopt a female child known as J An (hereinafter referred to as Baby J), and has moved the Court in this regard by way of an Originating Summons dated 14th February 2017, brought under sections 154, 156, 157, 158, 159, 160, 162, and 163 of the Children Act.

The Applicant sought the following orders in the said Originating Summons:

- (i) That the requirements of section 158(4)(a) of the Children's Act be waived as provided for by section 159(1) of the Act.
- (ii) That S M be appointed Guardian Ad Litem in this cause.
- (iii) That the Applicant be authorized to adopt baby J A and the baby be known as Y M K.
- (iv) That Z M N be appointed the legal guardian of the child.
- (v) That the Director of Children's Department do investigate the case and file a report.
- (vi) That the Registrar-General do make an entry in the Adopted Children 's Register recording the adoption.

The proposed guardian *ad litem* and legal guardian also filed affidavits in Court giving their consent to their respective appointments. Prayers (ii) of the said Originating Summons were granted during a hearing held on 5<sup>th</sup> April 2017, after an examination by the Court of the proposed guardian *ad litem*, as was prayer (v).

The Court at a hearing held on 3<sup>rd</sup> October 2017 also admitted as evidence a declaration report by Kenya Children's Homes Adoption Society dated 10<sup>th</sup> February 2017 and filed in Court on 13<sup>th</sup> March 2017; a report dated 7<sup>th</sup> June 2017 by Selastine Wanza Nthiani, the Machakos Principal Children Officer that was filed in court on 12<sup>th</sup> June 2017 ; and the report by the guardian *ad litem* dated 29<sup>th</sup> September 2017 and filed in Court on 3<sup>rd</sup> October 2017. This Court also examined the proposed legal guardian during the said hearing, and confirmed her consent and understanding of her responsibilities upon appointment.

A summary of these adoption proceedings is as follows as set forth in the various pleadings and reports filed in Court. Baby Janet is a female child who was born on 5<sup>th</sup> June 2015 at Kakamega County General Hospital. Her biological mother, one J A, willingly offered the child for adoption for reasons that the child having been conceived with her cousin was considered a taboo in Luhya customs. The biological mother who was a minor, gave her consent. Her guardian, one J K M, who was her aunt also gave consent on behalf of the biological mother's family. These consents were attached to the declaration report dated 10<sup>th</sup> February 2017 which was filed in Court by the Kenya Children's Home Adoption Society.

Baby J was subsequently committed to the care and protection of Springs of Life Children's home, following a court order issued on 5<sup>th</sup> August 2015 by the Kakamega Children's Court, and on 17<sup>th</sup> July 2015 the biological mother and her aunt swore and signed the final consent offering the child for adoption, which was also filed in Court. The child was later transferred to Kenya Children's Homes at Thomas Barnado Home on 2<sup>nd</sup> November 2015.

Baby J was placed with the Applicant on 22<sup>nd</sup> October 2016 pending adoption, and has lived with the Applicants since then. Baby Janet had earlier on been declared free for adoption by the Kenya Children's Home Adoption Society by their certificate No. [particulars withheld] dated 5<sup>th</sup> October 2016. The said Adoption Society in its reports filed in Court observed that the Applicants' application to adopt Baby J is motivated by the fact that she cannot have a biological child, and wants to share her love and provide a home and family for the child. The Applicant was also found to be emotionally and financially prepared and able to bring up a child.

The Machakos Principal Children's Officer in her report also observed that the Applicant is economically stable and able to provide for the child, and has provided a conducive home environment for Baby J, and that from the home visit she found that Baby J was cheerful, felt at home and had bonded with the Applicant. Lastly, the guardian *ad litem* in her report stated that the Applicant has been a good parent and has taken good care of, and bonded with Baby J.

Having evaluated the facts of this adoption application, I note that it is seeking a local adoption, and that the Applicant is a sole female applicant who is at least 25 years of age and under the age of 65 years, and who wishes to adopt a female child, which is allowed under section 158(1) and (2) of the Children Act. The consent of the biological mother of Baby J and that of her guardian was also procured pursuant to section 158(4) of the Children Act. It is therefore evident that the Applicant has fulfilled all the legal requirements relating to the adoption of Baby Janet.

This court is also satisfied that the Applicant is 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 Applicant has the financial and emotional capability to provide for the upkeep and education of the child. The reports filed in Court pursuant to these visits also do recommend the adoption of Baby J by the Applicant. Lastly, this court observed the Applicant with Baby Janet in court, and it was evident that the two had bonded well.

This court therefore forms the opinion that it would be in the best interest of Baby J to be adopted by the Applicant. Consequently, the Applicant shall assume all parental rights and duties of the biological parents in respect of the adopted child, and shall treat the adopted child as if she was born to her. The Applicant has also been made aware that once the adoption order is made it shall be final and binding during the lifetime of the child, and that the child shall have the right to maintenance and to inherit their property. The adoption order once made is absolute and irreversible, and the Applicant cannot give up the child owing to any subsequent unforeseen condition or other changes in the child.

I accordingly allow the application for adoption and order as follows:

1. The Applicant, Z K N, is hereby allowed to adopt the minor known as J A.

2. The child shall henceforth be known as Y M K.
3. As the child was born in Kenya, she is hereby declared a Kenyan citizen by birth.
4. Z M N shall be the legal guardian of the child should such eventuality arise.
5. The Registrar-General is directed to enter this adoption order in the adoption register.
6. I hereby forthwith discharge the guardian *ad litem*.

It is so ordered.

Dated, signed and delivered in open court at Machakos this 30<sup>th</sup> day of October 2017.

**P. NYAMWEYA**

**JUDGE**