

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 155 OF 2016

IN THE MATTER OF THE CHILDREN ACT, 2001

AND

IN THE MATTER OF J K M (MINOR)

M M K 1ST APPLICANT

Z M N –M..... 2ND APPLICANT

JUDGMENT

The Applicants, M M K (“the 1st Applicant”) and Z M N- M (“the 2nd Applicant”), seek by their application filed on 1st December 2016 to be allowed by this Court to adopt J K M, a minor (hereafter “the child”). The Applicants are husband and wife. They are citizens of Kenya as evidenced in their annexed copies of their passports. They celebrated their marriage on 29th November 2008 under the **African Christian Marriage and Divorce Act (now repealed)**. Both Applicants live together in Massachusetts, USA where the 1st Applicant is employed as a teacher at [particulars withheld] and the 2nd Applicant works as a counselor at [particulars withheld] Home.

The child who is the subject of the present adoption proceedings was born on 5th June 2001. He is born to M M K and R W N. The 1st Applicant is an uncle to the child in that the child is borne by his brother. Although the child has been living with his parents, the Applicants have been rendering financial and welfare support to him. The child’s biological parents have given their consents to the proposed adoption. A copy of the said consent is on the court record. The child being above fourteen (14) years of age has given his consent as required. A copy of the child’s consent is also on the court record. This is therefore a kinship adoption.

The adoption society, KKPI issued a certificate declaring the child free for adoption pursuant to **Section 156(1)** of the **Children Act**. The said freeing certificate is no. [particulars withheld] and the same is dated 31st August 2016. In their application filed on 1st December 2016, the Applicants sought among others, orders from this Court that L M P be appointed as the child’s guardian ad litem, and that the Director of Children Services be ordered to investigate the suitability of the Applicants to adopt the child and submit a report. The Applicants also sought to have the Court appoint the 1st Applicant’s brother, F K K as the child’s legal guardian. On 2nd November 2017, this Court issued an order appointing L M Pas the child’s guardian ad litem, and further directed the guardian ad litem and the Director of Children Services to file their respective reports in Court within forty five (45) days.

Pursuant to **Section 156(1)** of the **Children Act**, before this matter came up for hearing, KKPI, the relevant adoption society, prepared and filed in Court a favorable report in respect of 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 Services, and this report was similarly in favour of the proposed adoption. The guardian ad litem, L M P, also filed 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 Applicant is in the best interest 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 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 child's parents testified in court that they have agreed to the child being adopted by the Applicants who are also relatives. The child himself testified before this court that he has also agreed to be adopted by the Applicants. 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.

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. M M K ("the 1st Applicant") and Z M N- M, ("the 2nd Applicant") are hereby allowed to adopt the child, J K M. The child shall retain his current name. The 1st Applicant's brother, F K 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 guardian ad litem is hereby discharged. It is so ordered.

DATED AT NAIROBI THIS 20TH DAY NOVEMBER OF 2017

M. W. MUIGAI

JUDGE

In presence of:-

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