

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 84 OF 2016

IN THE MATTER OF THE CHILDREN ACT 2001

AND

IN THE MATTER OF J S W - A CHILD

AND

C W..... APPLICANT

JUDGMENT

1. **C W** hereinafter referred to as the applicant seeks to be authorised to adopt baby **J S W**. That if the adoption is authorised the said child be known as **J S W**, that the director of Immigration be authorised to issue the child with a Kenyan Passport. That **M M** be appointed the legal guardian of the child in the event of death or incapacity of the applicant before she is of full age and fully self-reliant.

2. The applicant was born and raised in Nairobi and in the UK. Her Mother **A W W** (61 years) is an administrator at [particulars withheld] Support the UK. She lives in London in [particulars withheld]. She was employed by the [particulars withheld] Service in 2000. She has worked in various departments such as department for education, foreign officer and department for international development. She is currently working in the Department for [particulars withheld] with the British High Commission in Nairobi where she is a [particulars withheld] and [particulars withheld] advisor. She has worked for the said department for the last four years. She was married from 2010-2015 to **M D**. She explained that they divorced officially in 2015 due to difficulties in working arrangements.

3. The child was born on 3/11/2009 to her biological mother **J W W**, 25 years old. Records indicate available that the minor was given out for adoption by her biological mother who is the applicant's first cousin. She gave birth when she was 16 years and did not know the father to the minor. She is married and has 3 children aged 4 years, 3years and 2 months. She left the minor with the maternal grandparents and got married to her current husband **S K**. She gave reasons that her husband does not want the minor who was born out of wedlock, the minor had been left with the grandparents and she wants her to have a good life, she is a housewife and does not have the means to support the minor. The biological mother gave her consent on 26/9/2016 vide a sworn affidavit. The applicant indicated that she opted for adoption because she wants to give the minor a chance to grow up in a good and stable family. She added that she is financially stable and will therefore be able to offer the minor a chance to have a good education and upbringing. She added that she also wants to enjoy the joy of motherhood.

4. The minor was declared free for adoption by Little Angels Network Adoption Society. The certificate serial number is [particulars withheld] dated 30/09/2016. In the report filed by the Little Angels Network on 26th January 2017, it states that the adoption is within the family which is meant to formalize an already existing relationship between the child and applicant. The child stands to benefit by having family love, care and provision. Relevant consents have been obtained from the child's biological mother in line with section 158(4) (b) of the Children Act (2001). The consent of the biological father cannot be obtained as his whereabouts are unknown; as the biological mother narrates that she is not able to know neither who the father is nor his whereabouts. In light of this they request this court to dispense with the alleged father's consent, in line with section 159(1) (c) of The Children Act 2001. The prospective adoptive parent has not only supported the child, but she has also accepted to adopt her and make her legally hers. This adoption would be in the child's best interest and recommended for the adoption of the

child.

5. The report from the Department of Children Services filed on 20th July 2017 recommends the adoption stating that the applicant has proved capable of taking on parental responsibility over the child in the matter during the statutory placement period prior to adoption during which she has been under her continuous care and control. Socially, the applicant qualify as she has been assessed and found fit to take on the parental responsibilities upon the child permanently as would be conferred on her by the adoption orders sought. The applicant is also in a position to financially provide for the child. The applicant appears to be able, ready and determined to adopt a child who require and deserves this alternative family care. The child in this matter is considered available for adoption having been offered for adoption by her mother. The mother is the applicant's first cousin. In the proposed adoption, she stands to gain a parent. She is doing well under the care of the prospective adoptive parent whom she has also bonded well with. Adoption would certainly be in her best interests. She has been duly declared free for adoption. The director of children services recommends therefore, that the court rule in favour of the application **C W**, to adopt the child.

6. The guardian ad litem in her report filed in court on the 20th July 2017 recommends the adoption and states that the child has bonded well with C and is happy and thriving in her new life. Based on her visits to their home and by observing the interaction between the applicant and the child, she wholeheartedly recommends the adoption.

7. As per the reports tendered the applicant has met all the requisite legal requirements as per the Children Act. All the reports are favourable. The child has not only gained a home but a parent as it is stated that the applicant has proved capable of taking on parental responsibility. This court examined her and noted her love for the child. I find that it would be in the child's best interest to authorise the adoption. I therefore authorise the applicant **C W** to adopt **J S** who shall be known as **J S W. M M** shall be the child's legal guardian in the event of death or incapacity of the applicant before she is of full age and fully self-reliant. I direct the Registrar General to enter this order in the adoption register. The child was born in Kenya and is therefore a Kenyan by birth and is entitled to all the rights that accrue to Kenyan Citizens under the Kenya Constitution 2010 and the Kenya citizenship and immigration Act. The guardian ad litem is hereby discharged. It is so ordered.

Dated signed and delivered this 17th day of November 2017.

R. E. OUGO

JUDGE

In the presence of;

Miss Simuyu h/b for Mr. Makori For the Applicant

M/s Charity Court Clerk