

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 17 OF 2014

IN THE MATTER OF THE CHILDREN ACT

AND

IN THE MATTER OF BABY A (MINOR)

J G G.....1ST APPLICANT

S W W2ND APPLICANT

JUDGMENT

The Applicants, J G G (“the 1st Applicant”) and S W W (“the 2nd Applicant”), seek by their application to be allowed by this Court to adopt Baby A (hereafter “the child”). The Applicants are husband and wife. They celebrated their marriage on 8th October 2005 at the Ruaraka Catholic Church under the African Christian Marriage and Divorce Act (*now repealed*). The 1st Applicant is an accountant while the 2nd Applicant is a marketer. Both Applicants live together in Ruiru area. Their marriage has not been blessed with any children due to medical reasons. Thus, they wish to adopt a child.

The child who is the subject of the present adoption proceedings was found abandoned in Karuri area within Kiambu County on 8th October 2011. The child was presumed to have been born on the same day. A report on the matter of the abandoned child was made at Rueno Police Post and the same was recorded vide OB No. 15/8/10/2011. The child was then referred to Happy Life Children’s Home where she was admitted on 26th October 2011. The Senior Principal Magistrate Children’s Court sitting at Nairobi, in accordance with **Section 119** of the **Children Act**, committed the child to the said children’s home on 2nd March 2012 vide **P&C No. 46/2012**. The child was placed in the custody of the Applicants on 12th November 2012 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 Rueno Police Post, no one has come forward to claim the child. A report to that effect dated 22nd June 2012 has been filed in Court. Thus, this Court dispenses with the consent of the child’s biological parents to the proposed adoption of the child by the Applicants. 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. 246 and the same is dated 31st October 2012.

In an application filed on 10th July 2014, the Applicants sought among others, orders from this Court that H N W be appointed as the child’s guardian ad litem, 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 also sought to have the Court appoint J W W, as the child’s legal guardian. They further sought for an order that upon adoption the child be known as **J G G**. On 11th July 2014, this Court issued an order appointing H N W as the child’s guardian ad litem, and further directing the guardian ad litem and the Director of Children’s Services to file their respective reports in Court.

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 favourable report in respect of the proposed adoption of the child by both Applicants. Another report in respect of the proposed adoption of the child by the Applicants was prepared by the Director of Children’s Services, and this report was similarly in favour of the proposed adoption. The guardian ad litem, H N W, 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 Applicants would be in the best interests 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 joint 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 consent of the biological parents of the child was dispensed with since the child was abandoned at birth, and his 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. 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. 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 them. The child considers the Applicants to be his 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. The Applicants, J G G and S W W, are hereby allowed to adopt Baby A. Henceforth, the child shall be known as J G G. His date of birth shall be 8th October 2011. His place of birth shall be Karuri within Kiambu County. He is presumed to be a citizen of Kenya by birth. J W W, the 2nd Applicant's sister 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.

DELIVERED AND SIGNED IN OPEN COURT AT NAIROBI THIS 15TH DAY OF FEBRUARY, 2016

M.W MUIGAI

JUDGE