



**REPUBLIC OF KENYA**

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

**ADOPTION CAUSE NO. 89 OF 2015**

**IN THE MATTER OF THE CHILDREN ACT**

**AND**

**IN THE MATTER OF BABY J**

**D W M .....1<sup>ST</sup> APPLICANT**

**W M K .....2<sup>ND</sup> APPLICANT**

**JUDGMENT**

The Applicants, D W M (“the 1<sup>st</sup> Applicant”) and W M K (“the 2<sup>nd</sup> Applicant”), seek by their application to be allowed by this Court to adopt Baby J (hereafter “the child”). The Applicants are husband and wife. They were married under customary law in 1998. They formalized the marriage on 26<sup>th</sup> April 2008 at the [particulars withheld] Church in Machakos County under the **African Christian Marriage and Divorce Act (now repealed)**. The 1<sup>st</sup> Applicant is a businessman while the 2<sup>nd</sup> Applicant is a Records Officer employed by the [particulars withheld]. Their marriage has been blessed with one (1) child, a son born on 27<sup>th</sup> May 2000. The Applicants have suffered several miscarriages after the birth of their son. They wish to expand their family, thus they have opted to adopt a child.

The child who is the subject of the present adoption proceedings was found abandoned inside sewerage in on 16<sup>th</sup> January 2014 in Huruma area within Nairobi County. She was presumed to have been born on the same day. A report on the matter of the abandoned child was made at Muthaiga Police Station and the same was recorded vide OB No. 45/17/1/2014. The child was thereafter referred to Thomas Barnardo House where she was admitted on 17<sup>th</sup> January 2014 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**, committed the child to Thomas Barnardo House on 12<sup>th</sup> March 2014 vide **P&C No 19/2014**. The child was placed in the custody of the Applicants on 28<sup>th</sup> August 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 Muthaiga Police Station, no one has come forward to claim the child. A report to that effect 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. Kenya Children’s Homes, an adoption society, issued a certificate declaring the child free for adoption pursuant to **Section 156(1)** of the **Children Act**. The said freeing certificate is no. 1121 and the same is dated 13<sup>th</sup> August 2014.

In an application filed on 7<sup>th</sup> April 2015, the Applicants sought among others, orders from this Court that E W N 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 N K and L K N, as the child’s legal guardians. They further sought for an order that upon adoption the child be known as J M W. On 15<sup>th</sup> May 2015, this Court issued an order appointing E W N 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, Kenya Children's Homes, 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, E W N, 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 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. 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 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. The Applicants, D W M and W M K, are hereby allowed to adopt Baby J. Henceforth, the child shall be known as J M W. Her date of birth shall be 16<sup>th</sup> January 2014. Her place of birth shall be Nairobi-Kenya. She is presumed to be a citizen of Kenya by birth. J N K and L K N, Sister and brother in law of the 1<sup>st</sup> Applicant shall be the legal guardians 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 15<sup>TH</sup> DAY OF FEBRUARY, 2016**

**M. W. MUIGAI**

**JUDGE**

***In presence of:-***