



**REPUBLIC OF KENYA**

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

**ADOPTION CAUSE NO. 158 OF 2015**

**IN THE MATTER OF THE CHILDREN ACT, 2001**

**AND**

**IN THE MATTER OF BABY F M**

**A W M ..... APPLICANT**

**JUDGMENT**

The Applicant, A W M seeks by her application filed on 18<sup>th</sup> June 2015 to adopt a child. The Applicant is a business lady. She is a widow. She was married to the late A M N who passed away on 22<sup>nd</sup> July 2012. The couple was blessed with one (1) biological child, a son born on 19<sup>th</sup> December 1999. The Applicant's late husband also had a son who is now an adult. The children have given their consent to the proposed adoption by the Applicant.

The child who is the subject of the present adoption proceedings was born on 10<sup>th</sup> July 2013 at Kiambu District Hospital to one F M. She was abandoned by her mother on 12<sup>th</sup> July 2013 at the hospital's new born unit after she absconded from the hospital. A report on the matter of the abandoned child was made at Kiambu Police Station and the same was recorded vide OB No. 17/17/07/2013. The child was discharged from the hospital 29<sup>th</sup> July 2013 and was taken to Mogra Rescue Centre where she was admitted on the same day for temporary care and protection, and this is evidenced by the child's admission form into the said home.

The Chief Magistrate's Children's Court sitting at Kiambu, in accordance with **Section 119** of the **Children Act**, committed the child to the said Children's Centre on 1<sup>st</sup> August 2013 vide **P&C No 49/2013**. The child was placed in the custody of the Applicant on 2<sup>nd</sup> February 2015 for mandatory bonding prior to adoption. The child has since then been in the continuous custody and care of the Applicant. According to correspondence from Kiambu 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 Applicant. 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. 85 and the same is dated 28<sup>th</sup> January 2015.

In the application filed on 18<sup>th</sup> June 2015, the Applicant 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 Applicant to adopt the child and submit a report. The Applicant also sought to have the Court appoint L W K as the child's legal guardian. She further sought for an order that upon adoption the child be known as A L W. On 31<sup>st</sup> July 2015, this Court issued an order appointing L M P as the child's guardian ad litem, and further directing the guardian ad litem and the Director of Children 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 the Applicant. Another report in respect of the proposed adoption of the child by the Applicant 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 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 Applicant have recommended that this Court allows the Applicant to adopt the child. This Court has evaluated the facts of this adoption. This is a local adoption. It is evident that the Applicant has 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 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. This Court observed the Applicant with the child in Court and it was evident that in the period that the Applicant has had the custody of the child, the child has bonded well with her. The child considers the Applicant to be her mother.

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 Applicant. Hence, this Court allows the Applicant's application. The Applicant, A W M, is hereby allowed to adopt Baby F M. Henceforth, the child shall be known as A L W. L W 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 22<sup>ND</sup> DAY APRIL OF 2016**

**M. W. MUIGAI**

**JUDGE**

**In presence of:-**

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