



**REPUBLIC OF KENYA**

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

**ADOPTION CAUSE NO. 304 OF 2014**

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

**AND**

**IN THE MATTER OF BABY H J**

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

**R N W .....2<sup>ND</sup> APPLICANT**

**JUDGMENT**

The Applicants, K W M (“the 1<sup>st</sup> Applicant”) and R N W (“the 2<sup>nd</sup> Applicant”), seek by their application to be allowed by this Court to adopt Baby H J (hereafter “the child”). The Applicants are husband and wife. They celebrated their marriage on 27<sup>th</sup> September 2008 under the **African Christian Marriage and Divorce Act (now repealed)**. The 1<sup>st</sup> Applicant is a teacher by profession while the 2<sup>nd</sup> Applicant is employed as a receptionist. Both Applicants live together in Nairobi. They have not been blessed with children of their own due to medical reasons. They therefore wish to adopt a child.

The child who is the subject of the present adoption proceedings is presumed to have been born on 16<sup>th</sup> July 2013. He was found abandoned in Kibera within Nairobi County 19<sup>th</sup> July 2013. A report on the matter of the abandoned child was made at Kilimani Police Station and was recorded vide OB No. [particulars withheld]. The Nairobi District Children’s Office was informed of the incident and managed to secure a temporary placement for the child at New Life Home Trust where the child was admitted on 19<sup>th</sup> July 2013. The Senior Resident 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 4<sup>th</sup> November 2013 vide **P&C No 351/2013**. The child was placed in the custody of the Applicants on 5<sup>th</sup> May 2014 for mandatory bonding prior to adoption. He has since then been in the continuous custody and care of the Applicants. According to correspondence from relevant police authorities at Kilimani 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. The adoption society, Little Angels Network, 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 30<sup>th</sup> April 2014.

In an application filed on 27<sup>th</sup> January 2015, the Applicants sought among others, orders from this Court that J A M 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 S M M, the 2<sup>nd</sup> Applicant’s sister as the child’s legal guardian. They further sought for an order that upon adoption the child be known as J J M W. On 30<sup>th</sup> January 2015, this Court issued an order appointing J A M 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, Little Angels Network, 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 Services, and this report was similarly in favour of the proposed adoption. The guardian ad litem, J A M, 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. 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, K W M and R N W, are hereby allowed to adopt Baby H J. Henceforth, the child shall be known as J J M W. His date of birth shall be 16<sup>th</sup> July 2013. He is presumed to be a citizen of Kenya by birth. S M M, the 2<sup>nd</sup> 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.

**READ AND DELIVERED IN OPEN COURT AT NAIROB THIS 16<sup>TH</sup> DAY OF MAY 2016**

**M. W. MUIGAI**

**JUDGE**

**In the presence of;**

***Ms. Mueni for the Applicant***