



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**ADOPTION CAUSE NO. 214 OF 2014**  
**IN THE MATTER OF THE CHILDREN'S ACT 2001**  
**AND**  
**IN THE MATTER OF BABY W**  
**BY**  
**J N K.....APPLICANT**

**JUDGMENT**

J N K, the single Applicant in this matter through an application filed on the 18<sup>th</sup> September 2014 seeks to adopt Baby W, the “child” in this matter. The Applicant is 50 years old, self employed and works as an Insurance Agent. She lives at Kahawa West-Kamae with her other 3 children from a previous relationship who have all consented to this adoption. She wishes to adopt in order to give a permanent home to a needy child.

The child in this matter, Baby W was born at home according to the Mbagathi District Hospital and was admitted to their facility on the 28<sup>th</sup> of July 2011. His mother deserted him shortly thereafter and the matter was then reported to the Kenyatta Hospital Police Post as OB No. 13/23/09/2011. The Police efforts to track down the child’s mother or relatives were fruitless and the investigations were closed. The baby being one in need of care and protection was committed to the care of Happy Life Children’s Home by the Senior Resident Magistrate at the Nairobi Children’s Court on the 02<sup>nd</sup> March 2012 vide Care and Protection Committal Order No. 56 of 2012. The Child Welfare Society of Kenya declared the child free for adoption on the 15<sup>th</sup> January 2013 pursuant to Section 156 (1) of the Children’s Act.

The Applicant brought an Application through Originating Summons filed on the 18<sup>th</sup> September 2014 seeking to adopt Baby W. The Applicant’s two grown children S C W who is 20 years old and J M T who is 25 years both swore Affidavits approving of their mothers application to adopt the child in this matter as a member of their family.

M W K was appointed by this Court on the 23<sup>rd</sup> January 2014 and consented to act as guardian ad litem in respect of the child Baby W. Pursuant to the Order made on the 10<sup>th</sup> December 2014 both her as the guardian ad litem and the Children’s Officer were to write reports on the suitability of the Applicant to adopt. The Child Welfare Society of Kenya assessed the Applicant and found her suitable to adopt a child. The child was freed for adoption vide Certificate of Declaring a Child Free for Adoption Serial No. [Particulars withheld] dated 15<sup>th</sup> January 2013.

In his report, the Director of Children Services stated that the Applicant had custody of the child since 06<sup>th</sup> June 2013 for the mandatory period necessary prior to adoption. He “the child” has since then been under the continuous care of the Applicant who has seen to it that the child has grown up well, is kept healthy and happy. She told the Children’s Officer that she has always wanted a large family and hence the reason she wishes to adopt. The Director noted however that there is a discrepancy in the case history of the child. The police state that the child was born and abandoned in the Mbagathi District Hospital yet the discharge sheet from the same hospital stated that the child was born at home and admitted to the Mbagathi District Hospital on the 28<sup>th</sup> July 2011. The circumstances of the abandonment and particulars of the care giver were however not given. Although the Director stated his concern he wasn’t against the adoption after the issue is addressed by the concerned adoption society to the satisfaction of the court.

In the guardian ad litem’s report, she stated that she had made several visits to the Applicants home in fulfilling her duty and has also known the Applicant for quite a while. The Applicant has never been married but was in a seven year relationship which resulted in her having three biological children. The father to her children has since moved on and currently resides in the US where he is married with two children. She guardian ad litem also reported that the child and the adopted son have a good relationship. The guardian ad litem stated that they had no reservations with regards to the adoption in question and she highly recommended the Applicant. She then requested that Ms. J N K the Applicant be granted the child in question as that would be in the best interests of the child.

The Chief Executive Officer of Child Welfare Society of Kenya, Irene Mureithi swore an affidavit where she deponed that the child had been referred to their facility from the Mbagathi District Hospital and that all the documents in their possession originated from the Hospital. She also annexed a letter from the Mbagathi District Hospital which was drawn on 27<sup>th</sup> November 2015. The letter from County Health Services reiterated that the child was born at home and later abandoned at the Hospital; they could not however get more information about him because maternity files are disposed off after three years unless the patient comes back for review.

There are special circumstances in this case being that the child being adopted is of a different gender from that of the Applicant.

**The Children’s Act provides;**

**Section 158 (2) An adoption order shall not be made in favour of the following persons unless the court is satisfied that there are special circumstances that justify the making of an adoption order—**

**(b) a sole female applicant in respect of a male child;**

However, the Applicant already has three children of her own among them a male and does not seem to exhibit any ill intent towards the child. The Applicant’s children seem to have grown up well thus making her a suitable candidate to adopt another child and raise him. It is in the best interests of the child to be brought up in the care of the Applicant considering the other options available to him. All things considered this court is satisfied that these are special circumstances that justify the making of an order of adoption in favour of the Applicant as the child shall be safe with the other male in the family.

The court hereby grants adoption of the child to the Applicant, J N K. The child shall be known as K D K and his date of birth shall be 28<sup>th</sup> July 2011. His place of birth shall be Mbagathi District Hospital in Kenya. He is presumed to be a Kenyan citizen by birth. Should there occur any misfortune, the legal guardians of the child shall be M W K and P K M (who are cousins to the Applicant). The guardian ad litem is hereby discharged. The Registrar General should thereby enter the order of adoption. It is so ordered.

**READ AND DELIVERED IN OPEN COURT AT NAIROBI THIS 20<sup>th</sup> DAY OF JUNE, 2016**

**MARGARET W. MUIGAI**

**JUDGE**

**In the presence of;**

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