



**REPUBLIC OF KENYA**

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

**ADOPTION CAUSE NO. 75 OF 2015 (OS)**

**IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001**

**IN THE MATTER OF ADOPTION OF BABY N**

**BY**

**W M K AND A W M (APPLICANTS)**

**JUDGMENT**

1. The Applicants W M K and A W M are in a monogamous marriage which was solemnized at Thika on 31<sup>st</sup> March 2007. They had three biological children, two of whom have died and only V K who was born on 4<sup>th</sup> June, 2009 remains. They wish to adopt the child known as Baby N a minor of male sex, through the Originating Summons dated 23<sup>rd</sup> March, 2015. They indicate that W M K is an Accountant with [Particulars withheld] while A W M is a business woman. They reside in Ruiru and are both Christians.
2. Records from Kawangware Chief dated 21<sup>st</sup> December, 2012, Muthangari Police Station dated 3<sup>rd</sup> January, 2013 and Children's Officer Starehe District dated 11<sup>th</sup> February 2013 respectively, indicate that the child who is the subject of this adoption proceedings together with his twin sister were found abandoned within the Nairobi River environment. They were rescued by two youth namely L K and R N who were cleaning the river on that day. The report was booked via OB No. [Particulars withheld] at the Muthangari Police Station. The child in question was taken to Riruta Health Centre for medical check-up where he was found to be in good medical condition.
3. On the same day the child was referred to Missionaries of Charity Mother Teresa's Homes, Huruma for care and protection. On 29<sup>th</sup> April, 2013, the child was officially committed to the same home by the Senior Resident Magistrate Nairobi Children's court vide P & C Case No. 108/2013. A Letter dated 10<sup>th</sup> September, 2012 from Muthangari Police Station indicates that the biological parents of the child were not traced despite investigations, nor did anyone come forward to claim the child.
4. The child was declared free for adoption on 30<sup>th</sup> October, 2013 by the Kenyans to Kenyans Peace Initiative Adoption Society, vide certificate No. [Particulars withheld]. He was released into the custody of the Applicants for mandatory foster care pending adoption on 7<sup>th</sup> February, 2014. The Applicants also signed a Foster Care Agreement dated the same day. Since then he has been in the continuous custody and care of the Applicants. Prior to the hearing of the adoption application, Kenya Children's Home Adoption Society, prepared and filed a report in court.
5. The Adoption Society, guardian ad litem and the Director of Children's Services have all made home

visits and established that the Applicants are financially and emotionally capable of providing for the upkeep and education of the child.

6. The Director of Children’s Services also filed a report dated 20<sup>th</sup> August, 2015 recommending the adoption for reasons that the child stands to gain the opportunities provided by becoming the son of the Applicants and growing up in a family set up rather than growing up in an institution. The guardian ad litem S O, also filed a report that was favourable and recommended the adoption of the child by the Applicants.

7. The child was in court during the hearing and appeared to have bonded well with the Applicants. He was jovial and related well with the Applicants. Both Applicants’ families support the adoption.

8. More importantly, the orders sought by the Applicants relate to a child. In law, in any matter concerning a child, the best interests of a child are paramount. **Article 53(2)** of the **Constitution** provides the guiding principle on this question as follows:

**“A child’s best interests are of paramount importance in every matter concerning the child.”**

The other pertinent law is the **Children Act No. 8 of 2001** and in particular **Section 4(3)** thereof.

9. From the foregoing, this court has formed the opinion that it would be in the best interest of the child to be adopted by the Applicants. Reasons wherefore I allow the prayers sought in the Originating Summons dated 23<sup>rd</sup> March, 2015 and order as follows:

- i. The Applicants W M K and A W M are hereby allowed to adopt baby N who shall henceforth be known as **F W M**.
- ii. His date of birth shall be presumed to be 21<sup>st</sup> December, 2012. He is presumed to have been born in Kenya in accordance with **Article 14 (3)** of the **Constitution**, and the place of birth shall be Nairobi.
- iii. C K M and P M K (friends to the Applicants) respectively are hereby appointed legal guardians of the child in the event that the Applicants die or are incapacitated by ill-health.
- iv. I direct the Registrar General to enter this order in the Adoption Register.
- v. The Director of Immigration is hereby authorised to issue the child with a Kenyan passport.
- vi. The guardian ad litem is hereby discharged.

It is so ordered.

**SIGNED DATED and DELIVERED** in open court this **28<sup>th</sup>** day of **July 2016**.

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**L. A. ACHODE**

**JUDGE**

**In the presence of .....Advocate for the Applicants**