



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**ADOPTION CAUSE NO. 234 OF 2014 (OS)**  
**IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001**  
**IN THE MATTER OF ADOPTION OF BABY I**  
**BY**  
**J M M K AND DNK (APPLICANTS)**

**JUDGMENT**

1. The Applicants JMMK and DNK are in a monogamous marriage which was solemnized in a church wedding at Nairobi Sailing Club, in Nairobi on 1<sup>st</sup> October, 2009. They have two children of their own namely FW and HM both aged five years respectively at the time of filing this application.
2. The Applicants wish to adopt the child known as Baby I a minor of female sex, through the Originating Summons dated 22<sup>nd</sup> July, 2014. They indicate that they are both farmers. They reside in Kinangop and are both Christians.
3. The child in this matter according to records is said to have been born in December 2012. She was abandoned in the Nairobi Central Business District, Nairobi in Naivas Supermarket in the custody of one Rose Njambi after the mother requested her to hold the baby as she went to take a bath. The promise to come back after taking bath came to nought. A report was made and the matter booked vide OB No. [particulars withheld] at Kamukunji Police Station. The child was admitted to Mama Ngina Children's Home for care and protection on the same date.
4. On 16<sup>th</sup> September, 2013 the child was officially committed to the same home by the Nairobi Children's court vide P&C Case No.[particulars withheld] . The biological parents of the child were not traced, nor did anyone come forward to claim her.
5. The court notes the laps on the part of Child Welfare Society in processing the child for adoption. The child was declared free for adoption on 9<sup>th</sup> September, 2014 by the Child Welfare Society of Kenya, vide certificate No. [particulars withheld] in accordance with **Section 156** of the **Children Act 2001**. She had earlier been released into the custody of the Applicants for mandatory foster care pending adoption on 17<sup>th</sup> March, 2014 and had signed a Foster Care Agreement dated the same day. This is contrary to **Section 156(1)** of the **Children Act 2001** which provides that:

**“No arrangement shall be commenced for the adoption of a child unless the child is at least six weeks old and has been declared free for adoption by a registered adoption society in**

**accordance with this rules prescribed in that behalf.”**

6. Since then she has been in the continuous custody and care of the Applicants. Prior to the hearing of the adoption application, Child Welfare Society of Kenya, an adoption society, prepared and filed a report in court.

7. 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 up keep and education of the child.

8. The Director of Children’s Services also filed a report dated 14<sup>th</sup> December, 2015 recommending the adoption for reasons that the child stands to gain the opportunities provided by becoming the daughter of the Applicants and growing up in a loving home and with siblings rather than growing up in an institution.

9. The guardian ad litem, M/s AMM also filed a report that was favourable and recommended the adoption of the child by the Applicants. It was her opinion following home visits that the child was being brought up in a proper and fit matter and had adapted to new environment.

10. The child was in court during the hearing and appeared to have bonded well with the Applicants. She was jovial and related well with the Applicants.

11. The court notes with concern the lapse on the part of Child Welfare Society as pointed out at paragraph 5 of this Judgment. It is however, important to note that the orders sought by the Applicants relate to a child. In law, in any matter concerning a child, the best interests of the 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.

12. This is a local adoption where the Applicants in my opinion fulfil the requirements for local adoption under the Children Act, 2001. They have proved during the placement period prior to adoption that they are capable of taking on the challenge of raising the child in this matter. Secondly they meet the social parameters that are considered relevant to their taking on parental responsibility and custody of the child in this matter on a permanent basis as would be conferred by the adoption order sought.

13. 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 22<sup>nd</sup> July, 2014 and order as follows:

i. The Applicants, JMMK and DNK are hereby allowed to adopt **Baby I** who shall henceforth be known as **JMK**

ii. Her date of birth shall be presumed to be 12<sup>th</sup> December, 2012. She 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. EWM (mother to the male Applicant) is hereby appointed legal guardian of the child in the event that the Applicants die or are incapacitated by ill-health.

iv. The Registrar General is directed 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 27<sup>th</sup> day of October 2016.

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**L. A. ACHODE**

**JUDGE**

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