



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**ADOPTION CAUSE NO. 40 OF 2016 (OS)**  
**IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001**  
**IN THE MATTER OF ADOPTION OF BABY R W N**

**BY**

**C N K (APPLICANT)**

**JUDGMENT**

1. The Applicant C N K is a Kenyan citizen. She is single having been divorced on 22<sup>nd</sup> September, 2015 and she has no child of her own. She wishes to adopt the child known as B R W N a minor of the female sex through the Originating Summons dated 23<sup>rd</sup> March, 2016. The Applicant indicates that she is a Human Resource Manager with [Particulars withheld]. She resides at Kimathi Estate in Nairobi.
2. The child who is the subject of this adoption proceedings was born at St. Teresa Hospital on 3<sup>rd</sup> May 2015 by M N K. The child's mother gave up the child for adoption upon signing a consent on 24<sup>th</sup> July 2015, six weeks after birth as required under **Section 159(8)(a)(b)** of the Childrens Act 2001. The biological mother's reason for offering the child for adoption was that she had given birth to the child out of wedlock and had not planned to be a single mother, not knowing the whereabouts of the child's father.
3. On 4<sup>th</sup> May, 2015, the child was admitted to Thomas Barnardo House Children's Home for care and protection. She was later officially committed to the same Home on 15<sup>th</sup> May, 2015 by the Senior Resident Magistrate Children's Court Nairobi, vide P&C No. 112 of 2015.
4. The child was declared free for adoption by Change Trust Society on 18<sup>th</sup> August, 2015 as per Section 156 of the Children Act 2001 as confirmed by certificate serial No.00032. She was released into the custody of the Applicant for mandatory foster care pending adoption on 22<sup>nd</sup> September, 2015 upon her signing a Foster Care Agreement dated the same day. Since then she has been in the continuous custody and care of the Applicant.
5. Prior to the hearing of the adoption application, Kenya Children's Homes prepared and filed a report in court dated 15<sup>th</sup> March, 2016 declaring the Applicant suitable to adopt.
6. The Adoption Society, guardian ad litem and the Director of Children's Services have all made home visits and established that the Applicant is financially and emotionally capable of providing for the up keep and education of the child.
7. The Director of Children's Service's report dated 5<sup>th</sup> August, 2016 recommended the adoption, for

reasons that the child knows the Applicant as her parent and is attached to her. That she has also bonded well with the Applicant. The guardian ad litem, M/s. Lucy Kimaru also filed a report that was favourable and recommended the adoption of the child by the Applicant.

8. The Director of Children Services' report states that the Applicant does not have children of her own and therefore adopting the subject child herein will present the best opportunity for her to have a child. That the child having been given up for adoption by her biological mother when she was an infant, means that the biological parent did not desire to raise her.

9. Of note is that the orders sought by the Applicant 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.”**

9. This principle also finds expression in the **Children Act No. 8** of **2001** and in particular **Section 4(3)** thereof. The Applicant’s opportunity or desire to have a child of her own is therefore only of secondary importance.

10. After a careful assessment of the reports filed herein and from the observation of the interaction of the Applicant and the child during the hearing, I am satisfied that it is in the best interest of the subject child to be adopted by the Applicant.

11. The child appears to have thrived and is healthy and happy under the care of the Applicant. She was in court during the hearing and appeared to have bonded well with the Applicant. She clearly considered her as her parent. The court also observes that the Applicant being aged 41 years, is older than the child by more than 21 years and is not yet above 65 years of age. She therefore meets the requirements of the law on age.

12. In the premise I find that it is in the best interest of the child herein that I allow, as I hereby do, the application brought by way of Originating Summons dated 23<sup>rd</sup> March, 2016 and order as follows:

- i. The Applicant C N K is hereby allowed to adopt baby **R W N**, who shall henceforth be known as **I T W**.
- ii. Her date of birth is 3<sup>rd</sup> May, 2015. She was born in Kenya, and the place of birth shall be Nairobi.
- iii. J W K (sister to the Applicant), is hereby appointed legal guardian of the child in the event that the Applicant dies or is incapacitated by ill-health.
- iv. The Registrar General is hereby 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 **24<sup>th</sup>** day of **November, 2016**.

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**L. A. ACHODE**

**JUDGE**

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