



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 29 OF 2015 (OS)

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

IN THE MATTER OF ADOPTION OF BABY S J aka M W M

BY

M M W AND J W M (APPLICANTS)

JUDGMENT

1. The Applicants M M W and J W M are in a monogamous marriage which was solemnized at [Particulars withheld] Catholic Church Dandora in Nairobi on 21st June, 2003. They have another child in the family, K N, aged six years old who was adopted in 2015.
2. The Applicants wish to adopt the child known as Baby S J a.k.a M W M a minor of male sex, through the Originating Summons dated 2nd February, 2015. They indicate that they are both self-employed business man and woman respectively. They reside at Ruiru and both profess the Christians faith.
3. The child in this matter, according to records, was found by a Good Samaritan abandoned at [Particulars withheld] area on 29th October, 2013. He was estimated to be a day old. The matter was reported to the Kitengela Police Station where it was booked vide OB No. [Particulars withheld]. The child was referred to Mahali pa Maisha Children's Home for care and protection by the Kitengela Police Station on the same day.
4. On 30th October 2013, the child had been officially committed to Mahali pa Maisha Children's Home for an indefinite period by the Mavoko Children's court vide Protection and Care Case No. 61 of 2013. On 15th January, 2015, the committal by the Mavoko Court was extended for six months. A letter dated 2nd May, 2014 from Kitengela Police Station confirmed that the biological parents of the child have not been traced and neither has anyone come forward to claim the child.
5. The child was declared free for adoption on 21st May, 2014 by the Kenya Children's Home, an Adoption Society vide certificate No. [Particulars withheld] in accordance with **Section 156(1)** of the **Children Act 2001**. The child was released to the Applicants upon the signing of a foster care agreement on 30th May, 2014. Since then he has been in the continuous custody and care of the Applicants.
6. Prior to the hearing of the adoption application, Kenya Children's Homes an adoption society prepared and filed a report in court. 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.

7. The Director of Children’s Services also filed a report dated 10th June, 2016 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 loving home amongst family, rather than growing up in an institution. The child has also bonded very well with the Applicants and with the elder sibling.

8. The guardian ad litem M/s. M K K also filed a report that was favourable and recommended the adoption of the child by the Applicants.

9. 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.

10. The main consideration in an application such as this is that the best interest of the child is paramount. **Article 53(2)** of the **Constitution** provides the guiding principle on this issue as follows:

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

This principle also finds expression under the **Children Act No. 8 of 2001** and in particular **Section 4(3)** thereof.

11. 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. The child has thrived under their care. 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.

12. 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 the prayers sought in the Originating Summons dated 2nd February, 2015 are allowed with orders as follows:

- i. The Applicants, M M W and J W M are hereby allowed to adopt **Baby S J** who shall henceforth be known as **M W M**.
- ii. His date of birth shall be presumed to be 29th October, 2013. 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 Kitengela.
- iii. J W K and F W W are hereby appointed legal guardians 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 **24th** day of **November, 2016**.

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L. A. ACHODE

JUDGE

In the presence ofAdvocate for the Applicants