



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**ADOPTION CAUSE NO. 280 OF 2015 (OS)**  
**IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001**  
**IN THE MATTER OF ADOPTION OF BABY J**

By

**S M M AND N W M (APPLICANTS)**

**JUDGMENT**

1. The Applicants S M M and N W M are in a monogamous marriage which was celebrated under the Kikuyu Customary Law in 1984. They also swore an affidavit on 22<sup>nd</sup> November, 2014 to confirm and affirm that they are legally husband and wife. They have no child of their own.
2. The Applicants wish to adopt the child known as Baby J a minor of male sex, through the Originating Summons dated 5<sup>th</sup> August, 2014. They indicate that S M M is a businessman while N W M is a [Particulars withheld] at [Particulars withheld]. They reside in Murang'a and are both Christians.
3. The record indicates that the child in this matter was abandoned at the gate of one A K in Kahawa West Estate, Nairobi. She stayed with the child for three months as per the orders of the area chief while investigations were being conducted. After the expiry of three months, the Good Samaritan reported the matter at the Kasarani Police Station where it was booked vide OB No. 45/13/08/2012. On 13<sup>th</sup> August, 2012, the child was admitted to Happy Life Children's Home for care and protection.
4. On 24<sup>th</sup> September, 2012 the child was officially committed to the same home by the Senior Resident Magistrate Children's Court Nairobi, vide P&C Case No. 411 of 2012 at the recommendation of the Children's officer. The biological parents of the child were not traced, nor did anyone come forward to claim her.
5. The child was declared free for adoption on 27<sup>th</sup> May, 2015 by the Kenyans to Kenyans Peace Initiative vide certificate No.487 in accordance with **Section 156** of the **Children Act 2001**. The child was released to the Applicants for foster care upon their signing of foster care agreement on 1<sup>st</sup> June, 2015. Since then he has been in the continuous custody and care of the Applicants.
6. Prior to the hearing of the adoption application, Kenyans to Kenyans Peace Initiative 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 6<sup>th</sup> 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 and with siblings rather than growing up in an institution.

8. The guardian ad litem, Ms. L 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. After a careful assessment of the reports filed herein and from the observation of the interaction of the Applicants and the child during the hearing, this court has formed the opinion that it would be in the best interest of the child to be adopted by the Applicants.

11. In considering an application such as this, the best interests of the child are 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.

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 25<sup>th</sup> November, 2015 and order as follows:

- i. The Applicants, S M M and N W M are hereby allowed to adopt **Baby J** shall henceforth be known as **J M M**.
- ii. His date of birth shall be presumed to be 27<sup>th</sup> July 2009. 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. R I and D N M (brother and sister-in-law to the 1<sup>st</sup> Applicant) respectively, 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 **17<sup>th</sup> day of November, 2016**.

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**L. A. ACHODE**

**JUDGE**

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