



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**ADOPTION CAUSE NO. 170 OF 2014**  
**IN THE MATTER OF THE CHILDREN ACT, 2001**

AND

IN THE MATTER OF BABY J

AND

E G M .....1<sup>ST</sup> APPLICANT

L M G .....2<sup>ND</sup> APPLICANT

**JUDGMENT**

**INTRODUCTION**

E G M and L M G (hereafter 'the Applicants) filed an Originating Summons Application dated 26<sup>th</sup> June, 2014 in which they seek the following orders:

- 1. That the Applicants be authorized to adopt Baby J, a child.***
- 2. That the consent of the biological mother be dispensed with.***
- 3. That the child be declared a Kenyan citizen.***
- 4. That upon the making of the adoption order, the child be known as J M G and the Registrar General do make the appropriate entry in the Adopted Children Register.***

**THE APPLICANTS' CASE**

In their Written Statement dated 26<sup>th</sup> June, 2014, the Applicants asserted that they got married in the year 1995 under African Christian Marriage and that the 1<sup>st</sup> Applicant is 52 years old and the 2<sup>nd</sup> Applicant is 53 years old.

That the 1<sup>st</sup> Applicant works with [particulars withheld] while the 2<sup>nd</sup> Applicant is a [particulars withheld] operating a business in Nairobi. Accordingly, that they are both Christians and they reside in [particulars withheld], in Nairobi.

The Applicants stated further that they have two biological children; they are of sound mind and have never been charged or convicted of any offence. In addition, that they had not received or agreed to

receive and no person has given or agreed to make or give them any payment or reward in consideration for the present adoption.

It was the Applicants' other contention that they have never made any other similar Application to this; they are both in good health and that in any event, they desire to have their identities kept confidential.

### **DETERMINATION**

The main issue for determination is whether the Applicants have fulfilled the criteria to warrant the grant of the adoption and the orders sought in the present Application. **Part XII** of the **Children Act, 2001** prescribes the guidelines and threshold to be met by an Applicant in Applications such as the present one. It is apparent that the instant Application is by a married couple and hence it is an Application lodged jointly as per the **Children Act** which at **Section 158 (1)** provides that:

***An adoption order may be made upon the application of a sole applicant or jointly by two spouses where the applicant or at least one of the joint applicants-***

***a. Has attained the age of twenty-five years and is at least twenty-one years older than the child but has not attained the age of sixty-five years; or***

***b. Is a relative of the child; or***

***c. Is the mother or father of the child.***

Applying the **Children Act, 2001** to the present matter, firstly, it will be noted that the child herein was born to one, S N M on 24<sup>th</sup> July, 2011 at Mbagathi District Hospital and the child's mother visited the Child Welfare Society of Kenya before giving birth and expressed her intentions of offering the child for adoption.

She was, in that regard counseled on the importance of a child being raise by the biological parents and further, on the legal implications of an adoption. That notwithstanding, she however insisted on putting the child up for adoption. The child's mother was thereafter issued with an offer form which she duly filled as an initial consent on 29<sup>th</sup> June, 2011. She gave her final consent six weeks later after the child was born. As it stands therefore, the child is in need of alternative care and parental attention in a family environment.

Based on the material before the Court, the Applicants were assessed by the *guardian ad litem*, F J M, and Child Welfare Society of Kenya and were found to be suitable to adopt the child herein. According to the materials availed, the Applicants are financially and socially capable of providing for the child's needs. They have stable income and they are in good health and are psychologically prepared for parenting.

Furthermore, the Child Welfare Society in its report dated 4<sup>th</sup> March, 2014 found the Applicants suitable to adopt the child and issued a Certificate declaring the child free for adoption.

One, Mr. J M M has consented to being the child's legal guardian, as per his Affidavit sworn on 26<sup>th</sup> June, 2014, in the event that anything happens to the Applicants thereby rendering them unable to take care of the child.

According to the Children's Officer's Report of 27<sup>th</sup> June, 2016, the Applicants have fulfilled the legal requirements for adoption and have proved capable of taking on parental responsibility over the child in this matter during the statutory placement period prior to the adoption during which he has been under their continuous care and control. Further, they are physically and mentally fit and can be entrusted with the minor for adoption and they are financially capable of bringing up the minor as they both have stable sources of income. The Report further indicates that the child has bonded well with the Applicants and

the home environment in which he is being raised in is conducive.

The Court finds that the Applicants have met the criteria of local adoptions and it would be in the child's best interest if he was adopted. The Court also notes that they are of good moral standing as evidenced by the Certificates of Good Conduct availed herein. The Court therefore holds that the Applicants shall assume the responsibilities of parenthood and the child shall be entitled to inherit from the property of the Applicants and furthermore, he shall not be given up because of any eventualities that might result.

In conclusion, the Court notes that it is in the best interest of the child herein that he be placed under the care and custody of the Applicants as he is going to have a home and a family with a secured future, with his education and wellbeing safeguarded. Furthermore, the child will have a sibling and hence it will be to his great benefit and interest.

**DISPOSITION**

The Applicants, E G M and L M G, are hereby authorized to adopt the child, J. The child shall henceforth be known as J M G. He is therefore presumed to be a Kenyan Citizen by birth and thereby accorded all the entitlements of a Kenyan citizen. J M M is hereby appointed to be the legal guardian of the child should any misfortune befall the Applicants. The Registrar General is hereby directed to enter this order in the Adoption Register. The *guardian ad litem*, F J M, is hereby discharged. It is so ordered.

**DATED, DELIVERED AND SIGNED ON THIS 13<sup>TH</sup> DAY OF DECEMBER, 2016**

**M. W. MUIGAI**

**JUDGE**

**In the presence of:**

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