



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**ADOPTION CAUSE NO. 57 OF 2016 (OS)**

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

**IN THE MATTER OF ADOPTION OF BABY A L**

**BY**

**E A A (APPLICANT)**

**JUDGMENT**

1. The Applicant E A A is a Kenyan citizen. She is single and has one child, J W G, aged 16 years from a previous relationship. She wishes to adopt the child known as Baby A a minor of the female sex through the Originating Summons dated 26<sup>th</sup> April 2016. The Applicant indicates that she is an Economist with the Ministry of *[particulars withheld]*. She resides at Utawala Estate in Nairobi.
2. According to records held by the Embakasi Police Station, the child who is the subject of this adoption proceedings was admitted at Mbagathi District Hospital on 29<sup>th</sup> June, 2014 and was abandoned by an unknown person. The matter was recorded vide OB No. 44/29/6/14 on 26<sup>th</sup> July, 2014. She was discharged and admitted to Happy Life Children's Home on 28<sup>th</sup> July, 2014 where she was later officially committed on 28<sup>th</sup> December, 2014 by the Nairobi Children's Court, vide P&C No. 335 of 2014.
3. The child was declared free for adoption by Kenya to Kenya Peace Initiative on 26<sup>th</sup> January, 2015 as per Section 156 of the Children Act 2001 as confirmed by certificate serial No. *[particulars withheld]*. She was released into the custody of the Applicant for mandatory foster care pending adoption on 15<sup>th</sup> November, 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.
4. Prior to the hearing of the adoption application, Kenya to Kenya Peace Initiative prepared and filed a report in court dated 13<sup>th</sup> July, 2016 declaring the Applicant suitable to adopt. The biological parents of the child were not traced, nor did anyone come forward to claim the child.
5. 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.
6. The Director of Children's Service's report dated 3<sup>rd</sup> October, 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's and her sibling. The guardian ad litem, *[particulars withheld]* also filed a report dated 27<sup>th</sup> September, 2016 that was favourable and recommended the adoption of the child by the

Applicant.

7. The Director of Children Services' report recommended the adoption for reasons that the child stands to gain the opportunities provided by becoming the daughter of the Applicant. That if the adoption is granted the child will grow up in a loving home rather than in an institution. That the child having been abandoned by her biological mother when she was an infant, means that the biological parent did not desire to raise her.

8. 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.”**

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.

9. 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 43 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.

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. 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 26<sup>th</sup> April, 2016 and order as follows:

- i. The Applicant E A A is hereby allowed to adopt baby A, who shall henceforth be known as P A Z.
- ii. Her date of birth is 12<sup>th</sup> April 2013. She was born in Kenya, and the place of birth shall be Nairobi.
- iii. V A (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 **8<sup>th</sup> day** of **December, 2016**.

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**L. A. ACHODE**

**JUDGE**

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