



**REPUBLIC OF KENYA**

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

**ADOPTION CAUSE NO 173 OF 2013**

**IN THE MATTER OF THE CHILDREN ACT**

**AND**

**IN THE MATTER OF R Q T**

**S K M-W .....1<sup>ST</sup> APPLICANT**

**A C T W .....2<sup>ND</sup> APPLICANT**

**JUDGMENT**

Before me is an application for adoption by two joint Applicants: S K M-W, the 1<sup>st</sup> Applicant, and A C T W. The joint Applicants are a married couple of Kenyan and British citizenship respectively. The joint Applicants married each other under Muslim Customary Law and celebrated their marriage on 29<sup>th</sup> December 2010. The 1<sup>st</sup> Applicant is a consultant employed by *[particulars withheld]* while the 2<sup>nd</sup> Applicant is an agriculturalist working for *[particulars withheld]*. The Applicants' marriage has thus far not been blessed with any biological children of their own. Accordingly, the Applicants have expressed an interest to adopt a child, and they seek to do so by way of the present application in which they pray to be allowed to adopt R Q T, hereafter "the child".

The child was born on 21<sup>st</sup> June 2001 to the 1<sup>st</sup> Applicant and T H, the former husband of the 1<sup>st</sup> Applicant. T H, the child's biological father, and the 1<sup>st</sup> Applicant got married on 12 August 1999 and divorced each other on 7<sup>th</sup> July 2003. On 21<sup>st</sup> October 2011, the child's biological father gave his consent to the 1<sup>st</sup> Applicant to have sole custody, care and control of the child. Subsequently, on 9<sup>th</sup> March 2012, the Nairobi Children's Court vide **Custody Case No. 945 of 2011** granted sole custody of the child to the 1<sup>st</sup> Applicant. Since then, the child has been in the sole custody of the 1<sup>st</sup> Applicant. The 1<sup>st</sup> Applicant gave her consent, as the child's biological mother, on 31<sup>st</sup> July 2013 for the 2<sup>nd</sup> Applicant, her husband, to adopt the child and this was filed in court on 2<sup>nd</sup> August 2013.

Pursuant to **Section 156(1) of the Children Act**, before this matter came up for hearing, the Adoption Society, Little Angels Network, prepared and filed in court a favourable report in respect of the proposed adoption of the child by both Applicants. This report was filed together with a certificate declaring the child free for adoption, which is dated 4<sup>th</sup> September 2013. Another report in respect of the proposed adoption of the child by the Applicants was prepared by the Director of Children's Services, and this report was similarly in favour of the proposed adoption. The guardian ad litem, A K M, also filed the statutory report made under **Section 160(2) of the Children Act** in which she noted that the proposed adoption of the child by the Applicants would be in the best interests of the child.

All the statutory reports that have been filed in respect of the proposed adoption of the child by the Applicants have recommended that this Court allows the joint Applicants to adopt the child. This Court has evaluated the relevant facts of the Applicants' application for adoption. This is a local adoption of a Kenyan child by a Kenyan citizen and a British citizen. It is clear that the Applicants have fulfilled all the legal requirements pertinent to the adoption of the child. The consent of the child's biological mother, the 1<sup>st</sup> Applicant, was freely given for the child to be jointly adopted by the 1<sup>st</sup> Applicant and the 2<sup>nd</sup> Applicant. The consent of the child's biological father can be waived in accordance with **Section 159(1)**

**of the Children Act.** The various reports on the home visits by the guardian ad litem, the Adoption Society and the Director of Children's Services indicate that the Applicants have the financial and emotional capability to adequately provide for the child's upkeep and education. This unanimous observation was confirmed by this Court when the Applicants attended court with the child, where the bonding between the child and the joint Applicants was clear.

The 2<sup>nd</sup> Applicant, A C T W, is a citizen of the United Kingdom and this has implications on the adoption process. In particular, the question arises as to whether the child can obtain British citizenship if the Applicants should consider moving to the United Kingdom. At this Court's instance, the 2<sup>nd</sup> Applicant obtained a letter dated 22<sup>nd</sup> January 2015 from the United Kingdom High Commission in Nairobi to clarify this matter. This letter makes clear that upon application by the adoptive parent for the citizenship of the child together with all the requisite documents, there is no reason to believe that an adopted child cannot be recognized as a citizen of the United Kingdom. While the letter from the said letter is not in itself a guarantee that the child in this matter will be accorded British citizenship, it would be presumptive to deny the child and the Applicants the opportunity to live together as a family solely on that ground. There appears to be no sufficient impediment to the 2<sup>nd</sup> Applicant's proposed adoption of the child jointly with the 1<sup>st</sup> Applicant.

On the basis of a careful examination of the documents presented before it as well as the observations made therein, this Court has formed the opinion that it would be in the best interests of the child to be adopted by the joint Applicants. The Applicants' application for adoption of the child is therefore allowed. The joint Applicants, S K M-W and A C T W, are hereby allowed to adopt R Q T. Henceforth, the child shall be known as R Q M-W. The guardian ad litem is hereby discharged. It is so ordered.

**DATED AT NAIROBI THIS 27<sup>TH</sup> DAY OF FEBRUARY 2015**

**M. MUIGAI**

**JUDGE**