



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**ADOPTION CAUSE NO 144 OF 2014**  
**IN THE MATTER OF THE CHILDREN ACT**  
**AND**  
**IN THE MATTER OF BABY M**

**M K M.....1<sup>ST</sup> APPLICANT**

**T W K.....2<sup>ND</sup> APPLICANT**

**JUDGMENT**

M K M, hereafter “the 1<sup>st</sup> Applicant”, and T W K, hereafter “the 2<sup>nd</sup> Applicant”, seek by their application to be allowed by this Court to adopt Baby M, hereafter “the child”. The Applicants are husband and wife who celebrated their marriage in 1997. The 1<sup>st</sup> Applicant is currently a secondary school teacher while the 2<sup>nd</sup> Applicant is a self-employed business lady. Both Applicants live together in Ruiru. Their marriage has not been blessed with any children of their own due to medical reasons, but they are sympathetic to the need for abandoned children to have a family and so would like to give a home to one. They also wish to expand their family by means of adoption and thus they have expressed an interest to adopt Baby M.

The child who is the subject of the present adoption proceedings was born on 7<sup>th</sup> September 2012 at Tumaini Clinic in Kariobangi, Kenya. The child was abandoned by her biological mother at the clinic the same day she was born. The identity of the biological mother is known. She is C M. She went to Tumaini Clinic. She excused herself to go to the washrooms and left the child and did not come back. The matter was referred by one J M of Tumaini Clinic. A report on the matter of the abandoned child was made at Kariobangi Police Station and the same was recorded vide OB No 12/09/11/2012. The child was subsequently referred to Missionaries of Charity, a children’s home, for care and protection.

The Senior Resident Magistrates Children's Court at Nairobi, in accordance with **Section 119** of the **Children Act**, committed the child to Missionaries of Charity Children’s Home on 29<sup>th</sup> April 2013 vide **P&C No [particulars withheld]/2013**. The child was placed in the custody of the Applicants on 4<sup>th</sup> July 2013 for mandatory bonding prior to adoption. The child has since then been in the continuous custody and care of the Applicants. According to correspondence from Kariobangi Police Station, the child in this matter remains unclaimed. A letter to that effect dated 13<sup>h</sup> May 2013 has been filed in Court. In that regard, this Court dispenses with the consent of the child’s biological parents to the proposed adoption of the child by the Applicants. Kenya Children’s Homes Adoption Society issued a certificate declaring the child free for adoption pursuant to **Section 156(1)** of the **Children Act**. The said freeing certificate is no. 0011 and the same is dated 7<sup>th</sup> June 2013.

The Applicants filed an application for adoption on 23<sup>rd</sup> May 2014 seeking, among others, orders from this Court that R N N be appointed as the child’s guardian ad litem, and that the Director of Children’s Services be ordered to investigate the suitability of the Applicants to adopt the child and submit a report. The Applicants also sought to have the Court appoint S N M, a sister of the 1<sup>st</sup> Applicant, as the child’s legal guardian. They further sought for an order that upon adoption the child be known as T M K. On 31<sup>st</sup> July 2014, this Court issued an order appointing R N N as the child’s guardian ad litem, and further

directing the guardian ad litem and the Director of Children's Services to file their respective reports in Court.

Pursuant to **Section 156(1)** of the **Children Act**, before this matter came up for hearing, Buckner Kenya Adoption Services, an adoption society, prepared and filed in Court a favourable report in respect of the proposed adoption of the child by both Applicants. 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, R N N, 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 facts of this adoption. This is a local adoption. It is evident that the Applicants have fulfilled all the legal requirements relative to the adoption of the child. The consent of the biological parents of the child was dispensed with since the child was abandoned at birth, and his biological parents could not be traced to give their consent. This Court is satisfied that the Applicants are able to take on the parental responsibility over the child. The home visits by the guardian ad litem, the Adoption Society and the Director of the Children Services established that the Applicants have the financial and emotional capability to provide for the upkeep and education of the child. This Court observed the Applicants with the child in Court and it was evident that in the period that the Applicants have had the custody of the child, the child has bonded well with them. The child considers the Applicants to be her parents.

On the basis of a careful examination of the documents presented before me as well as the observations made therein, this Court has formed the opinion that it would be in the best interest of the child to be adopted by the Applicants. Hence, this Court allows the Applicants' application. The Applicants, M K M and T W K, are hereby allowed to adopt Baby M. The child shall henceforth be known as T M K. His date of birth shall be 7<sup>th</sup> September 2012. His place of birth shall be Tumaini Clinic at Kariobangi in Nairobi, Kenya. He is presumed to be a Kenyan citizen by birth. S N M, a sister of 1<sup>st</sup> Applicant, shall be the legal guardian of the child should such eventuality arise. This Court directs the Registrar General to duly enter this order in the Adoption Register. The guardian ad litem is hereby discharged. It is so ordered.

**DATED AT NAIROBI THIS 30<sup>TH</sup> DAY APRIL OF 2015**

**M. MUIGAI**

**JUDGE**