

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO 191 OF 2014

IN THE MATTER OF THE CHILDREN ACT

AND

IN THE MATTER OF BABY C B

R K T1ST APPLICANT

T W K2ND APPLICANT

JUDGMENT

The Applicants, R K T (“the 1st Applicant”) and T W K (“the 2nd Applicant”), seek by their application to be allowed by this Court to adopt Baby C B, hereafter “the child”. The Applicants are husband and wife, and they celebrated their marriage in 2006 after having lived together from 1988. Both Applicants are self-employed businesspersons, and they live together in Nairobi. Their marriage has been blessed with three (3) biological children, but they desire to give back to society and to expand their family by adopting and giving a home to a needy child.

The child who is the subject of the present adoption proceedings was born on 21st May 2005 in Kayole, Nairobi. The child was abandoned by her biological mother after she was born. The identity and whereabouts of the child’s biological mother remain unknown. A report on the matter of the abandoned child was made by a good Samaritan who rescued the child at Kayole Police Station and the same was recorded vide OB No. 9/22/5/05. The child was then referred to Imani Children’s Home for protection and care, and this is evidenced by the child’s admission form into the said home dated 22nd May 2005.

The Nairobi Resident Magistrate Children's Court, in accordance with **Section 119** of the **Children Act**, committed the child to Imani Children’s Home on 24th May 2006 vide **P&C No 129/2006**. The child was subsequently placed in the custody of the Applicants on 9th January 2014 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 relevant police authorities in Kayole, no one has come forward to claim the child. A letter to that effect dated 22nd May, 2005 has been filed in Court. Thus, 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. 0987 and the same is dated 10th March 2009.

By an application dated on 8th August 2014, the Applicants sought, among others, orders that M K K be appointed as the child’s guardian ad litem, and that the Director of Children’s Services and the guardian ad litem be ordered to investigate the Applicants’ suitability to adopt the child and submit their reports. The Applicants also sought to have the Court appoint A W K, their eldest biological daughter as the child’s legal guardian. They further sought for an order that upon adoption the child be known as L W. On 14th October 2014, this Court issued an order appointing M K K 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, Kenya

Children's Homes, the relevant 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 favourable. The guardian ad litem, M K K, 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 her biological parents could not be traced to give their consent. This Court has satisfied itself that the Applicants are qualified and able to take care of the child. The home visits by the guardian ad litem, the Adoption Society and the Director of the Children Services established that the joint Applicants have proved capable of taking on parental responsibility over the child. The reports also make clear that the Applicants are ready, able and determined to adopt the child in the matter and to raise her in a similar manner as their biological children. This Court also 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 application. The Applicants, R K T and T W K, are hereby allowed to adopt Baby C B. The child shall henceforth be known as L W. Her date of birth shall be 21st May 2005. Her place of birth shall be Kayole in Nairobi, Kenya. She is presumed to be a Kenyan citizen by birth. A W K, a biological daughter of the joint Applicants, 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 24TH DAY APRIL OF 2015

M. MUIGAI

JUDGE

Mr. Mbaabu holding for Ms. Ndegwa for the Applicants