



**REPUBLIC OF KENYA**

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

**ADOPTION CAUSE NO 25 OF 2014**

**IN THE MATTER OF THE CHILDREN ACT**

**AND**

**IN THE MATTER OF BABY I R *a.k.a.* I M K**

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

**J S K .....2<sup>ND</sup> APPLICANT**

**JUDGMENT**

The Applicants, P K M (“the 1<sup>st</sup> Applicant”) and J S K (“the 2<sup>nd</sup> Applicant”), seek by their application to be allowed by this Court to adopt Baby I R a.k.a. I M K (hereafter “the child”). The Applicants are husband and wife, and they celebrated their marriage in 1991. The 1<sup>st</sup> Applicant is currently employed by **[particulars withheld]** as a strategy manager while the 2<sup>nd</sup> Applicant is a self-employed business lady. Both Applicants live together in Nairobi. Their marriage has been blessed with two biological sons, but they have always wanted a daughter and thus they wish to adopt the child in this matter in order to expand their family.

The child who is the subject of the present adoption proceedings was born on 22<sup>nd</sup> October 2012 at Thika Level 5 District Hospital in Thika, Kenya. The child was abandoned by her biological mother at the hospital a day after she was born. The identity of the biological mother is unknown since she removed from the baby’s foot the name tag with her details before absconding. A report on the matter of the abandoned child was made at Thika Police Station and the same was recorded vide OB No 18/1/11/2012. The child was then referred to Limuru Children’s Center for care and protection, and this is evidenced by the child’s admission form into the said home.

The Principal Resident Magistrate Children's Court sitting at Thika, in accordance with **Section 119** of the **Children Act**, committed the child to Limuru Children’s Center on 7<sup>th</sup> November 2012 vide **P&C No 193/2012**. The child was placed in the custody of the Applicants on 29<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 relevant police authorities in Thika, no one has come forward to claim the child. A letter to that effect dated 6<sup>th</sup> May 2013 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. 0962 and the same is dated 18<sup>th</sup> June 2013.

The Applicants filed an application for adoption on 28<sup>th</sup> January 2014 seeking, among others, orders from this Court that P O O 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 M R K K, a sister of the 2<sup>nd</sup> Applicant, as the

child's legal guardian. They further sought for an order that upon adoption the child be known as I M K. On 25<sup>th</sup> May 2014, this Court issued an order appointing P A O 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 in favour of the proposed adoption. The guardian ad litem, P O O, 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 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, P K M and J S K, are hereby allowed to adopt Baby I R. Henceforth, the child shall be known as I M K. Her date of birth shall be 22<sup>nd</sup> October 2012. Her place of birth shall be Thika Level 5 Hospital in Thika, Kenya. She is presumed to be a Kenyan citizen by birth. M M K, a biological son 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 10<sup>TH</sup> DAY APRIL OF 2015**

**M. MUIGAI**

**JUDGE**