

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

Adoption Cause No 219 Of 2014

IN THE MATTER OF THE CHILDREN ACT

AND

IN THE MATTER OF BABY J M

W J O1ST APPLICANT

M K M2ND APPLICANT

JUDGMENT

By their joint action brought by way of originating summons, W J O, hereafter “the 1st Applicant”, and M K M, hereafter “the 2nd Applicant”, seek to be allowed by this Court to adopt Baby J M, hereafter “the child”. The Applicants are husband and wife who got married in 2013. The 1st Applicant is currently employed as a sales manager while the 2nd Applicant works as a relationship manager. Both Applicants live together in Nyayo Estate, Nairobi. The Applicants do not have biological children of their own, and they had already agreed to adopt a child before they were married. Hence, they opted to start their family with an adopted child as they wait to have their own biological child.

The child who is the subject of these adoption proceedings was abandoned by her biological mother in the house of one R N on 7th January 2013. Upon realizing that the biological mother had tricked her into watching the child for her in order to abandon her, the said R N reported the matter at Soweto Police Station where it was recorded vide OB 25/07/01/2013. This fact is confirmed by an initial letter from the said Police Station dated 7th January 2013 and a Children’s Officer’s report dated 11th March 2013. Subsequently, the child was referred to Imani Children Home for care and protection where she was admitted on the same day. The Children’s Court at Nairobi, in accordance with **Section 119** of the **Children Act**, committed the child to the said children’s home on 19th April 2013 vide **P&C No. 98/2013**.

The child was placed with the Applicants on 1st February 2013 for the mandatory bonding period prior to adoption on 20th April 2014. The child has since been in the continuous custody and care of the Applicants. According to correspondence from the OCS Soweto Police Station dated 25th February 2014, no person has come forward to claim the child for a period exceeding 6 months. In that regard, this Court can dispense with the consent of the child’s biological parents to the proposed adoption of the child by the Applicants since the child was abandoned and the said parents cannot be traced. Buckner Kenya 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 **Serial No. [particulars withheld]** and the same is dated 14th March 2014.

The Applicants filed an application for adoption on 22nd September 2014 seeking, among others, orders from this Court that L J K be appointed the child’s guardian ad litem, and that the Director of Children’s Services be directed to investigate the suitability of the Applicants to adopt the child and submit a report on the relevant findings. The Applicants also sought to have the child renamed Z J W upon the issuance of the adopted order and to have the Registrar-General duly enter the same in the Adopted Children’s Register. On 30th October 2014, this Court issued an order appointing L J K 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 was heard, Buckner Kenya Adoption Services prepared and filed in Court a report regarding the proposed adoption of the child by the Applicants. It was concluded by the said adoption society that the Applicants are suitable to adopt the child. Another report on the Applicants' proposed adoption of the child was prepared by the Director of Children's Services, and this report similarly supports the proposed adoption. The guardian ad litem, L J 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 carefully evaluated the facts of this proposed adoption. Considering that the instant case entails a local adoption, it is evident that the Applicants have complied with all the legal requirements for the adoption of the child. The consent of the child's biological parents was dispensed with since the child was abandoned at birth, and his biological parents could not be traced to give their consent.

The home visits by the guardian ad litem, the Adoption Society and the Director of the Children Services established that the Applicants have proved capable of taking on parental responsibility. It also became apparent that they are ready and determined to adopt the child in the matter. The unanimous finding of all the statutory reports filed in court is that the Applicants have financial and emotional capability to provide for the of the child's well-being, and this will be in the child's best interest as she will get alternative care. This Court observed the Applicants with the child in Court and it was evident that the child has bonded well with them, is happy in their company and considers the Applicants to be his 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, W J O and M K M, are hereby allowed to adopt Baby J M. The child shall henceforth be known as Z J W. Her date of birth shall be 1st January 2013. Her place of birth shall be Kayole, Nairobi. She is therefore presumed to be a Kenyan citizen by birth. J P O and J W G, the brother and sister-in-law respectively of the 1st Applicant, shall be the child's legal guardian should such eventuality arise. This Court directs the Registrar-General to enter this order in the Adoption Register. The guardian ad litem is hereby discharged. It is so ordered.

DATED AT NAIROBI THIS 24TH DAY OF JULY 2015

M. MUIGAI

JUDGE

In the presence of;

Counsel for the Applicant Ms. Ouga