

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MILIMANI

ADOPTION CAUSE NO. 130 OF 2014 (OS)

AND

IN THE MATTER OF THE CHILDREN'S ACT

(NO. 8 OF 2001)

AND

IN THE MATTER OF BABY J W

JUDGEMENT

1. B O M and J K B is a married Kenyan couple. They seek to adopt a male child, known for the purposes of these proceedings as Baby J W. They have moved the court by their Originating Summons dated 29th April 2014.
2. J W, a twin brother to J W, was born on [*particulars withheld*] to one P N at Nyeri Provincial General Hospital, Nyeri. On 23rd October 2008, the birth mother approached the Child Welfare Society of Kenya, the adoption agency that is arranging this adoption, with a view of giving up the child for adoption. The birth mother signed all the relevant consents to give up her rights over the child. The child was handed over to the Nanyuki Children's Home after he had been committed to the institution by the Nanyuki Children's Court on 19th March 2010. He was placed with the applicants on 23rd June 2010 for the bonding period. He was declared free for adoption by the Child Welfare Society of Kenya by their certificate dated 8th July 2014.
3. To facilitate this adoption, the applicants have been assessed by the Child Welfare Society of Kenya adoption society, the Director of Children Services, and the guardian *ad litem*, R Z G N. The three have compiled and filed their reports in court - the Child Welfare Society of Kenya adoption society's report is dated 8th July 2014, while that of the Director of Children's Services is dated 14th November 2014. The guardian *ad litem*'s report is dated 6th March 2015, and was filed in court on 14th April 2015. All these reports are favourable and recommend the proposed adoption.
4. The applicants have filed documents that demonstrate that they have the financial and emotional capability and capacity to take care of the child. The child appears to have bonded well with them and he considers them to be his parents.
5. In the opinion of this court it would be in the best interests of the child that he is adopted by the applicants. The applicants will be able to provide a home and a family for the child to grow up in and thereafter become a useful member of the family and the society at large. Consequently, the applicants shall assume all parental rights and duties of the biological parents in respect of the adopted child; they shall treat the adopted child as if he was born to them. The applicants have been made aware that once the adoption order is made it shall be final and binding during the lifetime of the child and that the child shall have the right to inherit their property. The applicants cannot give up the child owing to any subsequent unforeseen behaviour or other changes in the child.

6. I am satisfied that all the legal requirements for a local adoption have been met. The only concern that I must record is that the child was placed with the applicants before he had been formally declared free for adoption. That was inconsistent with the very clear provisions of the Children Act on the matter. I have noted that this has been a consistent violation of the provision by the Child Welfare Society of Kenya, a practice that must be condemned. The adoption society should take steps to ensure that this is not repeated. I note however that the child has been with the applicants since 23rd June 2010 and has since bonded with them. It would be unjust to decline the application and require that he be returned to the children's home. I am therefore inclined to overlook the violation in the best interests of the child.

7. The court allows the applicants application to adopt the child. The applicants, B O M and J K B, are hereby allowed to adopt the child, Baby J W. He shall hereafter be known as B B O. R Z G N is hereby appointed the legal guardian of the child in the event of the untoward happening to the applicants. As the child was born to a known Kenyan mother, he is hereby declared Kenyan by birth. The Registrar-General is directed to enter this adoption order in the adoption register. The guardian *ad litem* is hereby discharged.

DATED, SIGNED and DELIVERED at NAIROBI this 30TH DAY OF OCTOBER, 2015.

W MUSYOKA

JUDGE