

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 26 OF 2005

IN THE MATTER OF THE CHILDREN'S ACT

AND

IN THE MATTER OF J (AN INFANT)

JUDGMENT

1. The applicant in this matter **M G K** seeks through her application dated the 30th of November 2004 to be authorized to adopt the infant J. She also seeks that the court to dispense with the requirement of a birth certificate and with the natural mother's consent as she is not known.
2. Kiambi Marete a social worker with the Child Welfare Society of Kenya states in her affidavit dated the 29th of November 2004, that the infant was born on the 26th December 2001 at a private clinic known as Reproductive Health Services which is now closed. The mother absconded from the clinic immediately after birth and the infant was taken to Mama Ngina Children Home. The infant stayed at the said clinic until she was placed under the care of the applicant on the 25th of March 2002 and that the infant has been under her continuous care since then. That she perused the records at the said home and found that the name of the birth mother is not in the register and that the clinic has closed by the Medical Practitioners Board. She was also not able to trace the infant's notification of birth at the Children's home.
3. The applicant in her further affidavit dated the 10th of November 2015 states that she has had the infant in her continuous care from when she was only three months from the 25th March 2002 and that the infant knows her as her mother. That she knows that the infant was an abandoned child having been born in a private clinic called Reproductive Health Services which has since been closed. That since the filing of the adoption proceedings for the infant she has requested the Society to avail her the records that show the case history of the infant and a certificate declaring the child free for adoption in vain. That the society has instead referred her to the report of Kiambi Marete and stated that they were unable to process the declaration for the child. She was directed to seek the Court's leave for the child to be declared free for adoption. The applicant's plea is that the court considers the application with the best interest of the infant.
4. Child Welfare Society of Kenya filed its report on the 10th of November 2015. It gives the background of the infant that she was an abandoned child at birth and that the applicant has had the infant since 25/3/02. That there are no records that give sufficient background about the child and that from the information they have the home has sought the dispensation of the mothers consent under Section 159(1) (a) (i) of the Children Act 2001. That the case has been reported to the police at Langata Police Station vide OB No. 14/20/11/2008 in an effort to trace the relatives of the child, however the police efforts to trace the relatives have been unfruitful and that nine (9) years have passed without anyone coming to claim the child. That the child is in need of an alternative family and adoption would be in her best interest and that they therefore declared the child free for adoption under Section 159 (1) (a) of the Children Act 2001. The certificate declaring the child free for adoption is dated the 1st of July 2010, its No. 0042.
5. Child Welfare Society of Kenya report dated the 1/7/10 gives the requisite background of the adoptive parent, she is an educated women who is financially stable, she has no criminal record and has no health issues, she is good health status and her extended family supports her that they appreciate and love the child very much. She loves and has taken care of the child, the Society recommends the adoption of infant by the applicant.

6. The Director of Children's Services too filed a report, it's dated the 7th of November 2014. The reports recommends the adoption it being a local one and also that the applicant has fulfilled the legal requirements under the Children Act. The applicant is recognized as one who has set a good example where ordinary Kenyans come forward to adopt children who require and deserve an alternative family care within the national boundaries. The adoption society has explained the absence of the consent of the natural mother and a police report was done.
7. The guardian ad litem report is also favourable. **D M N** has consented to be the infant's legal guardian.
8. I have considered the application and I note that this is case of local adoption. Its one of those exceptional cases where a child was placed before being declared free for adoption. The adoption agency has explained how the applicant got the child. It has been sufficiently shown that the child's mother cannot be traced as she abandoned the child at birth and has never returned to look for her child. I therefore dispense with the consent of the natural mother. The applicant has fulfilled the legal requirements for adoption under the Children Act. She loves the child and has taken good care of her and having noted the circumstances of this case I find that it will be in the best interest of the child if the applicant is authorized to adopt the infant J. Her application to adopt the child is granted. The infant shall be known as **J W K**. **D M N** shall be the child's legal guardian. He is discharged as the guardian ad litem. The child having been born in Kenya shall be presumed to be a Kenya and she shall be issued with a birth certificate bearing the names J W K. It is so ordered.

Dated, signed and delivered this **4th Day of December 2015**

R.E.OUGO

JUDGE

In the presence of;-

.....**For the Applicant**

Charity Court Clerk