



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**ADOPTION CAUSE NO. 30 OF 2013**

IN THE MATTER OF THE CHILDREN ACT NO. 8 OF 2001

AND

IN THE MATTER OF ADOPTION OF BABY M W

AND

IN THE MATTER OF AN APPLICATION FOR ORDERS OF ADOPTION OF BABY M W BY J K E  
AND J N K THE APPLICANTS

**JUDGMENT**

The joint applicants herein namely **J K E** (hereinafter referred to as the 1<sup>st</sup> applicant) and **J N K** (hereinafter referred to as the 2<sup>nd</sup> Applicant) both filed this Originating Summons dated 5<sup>th</sup> December, 2013 seeking *inter alia* the following orders

**“4. That J K E AND J N K be authorized to jointly adopt BABY M W (the minor).**

**5. That the name of M W to change to S M and the Registrar-General be directed to make an entry in the Adopted Children Register in the prescribed form.**

**6. That the costs of this summons be costs in the cause.”**

The application was disposed of by way of *vive voce* evidence. On 14<sup>th</sup> February, 2014 the court made an order approving the appointment of ‘*P M M*’ as ‘*Guardian ad Litem*’ in the matter. The applicants both testified before the court on 18<sup>th</sup> June, 2014.

Section 156 (1) of the Children Act, 2001 provides as follows

**“No arrangement shall be commenced for the adoption of a child unless the child is at least six weeks old and has been declared free for adoption by a registered adoption society in accordance with the rules prescribed in that behalf.”**

In this case the subject child was born at the Provincial Coast General Hospital on 7<sup>th</sup> May, 2012. She was therefore aged about one and a half years old in December, 2013 when this application was filed. I have seen annexed to the summons a certificate serial No. [particulars withheld] declaring the child free for adoption. This certificate was issued by the Child Welfare Society of Kenya which is a registered

adoption agency. I am therefore satisfied that the legal prerequisites for this adoption have all been met.

### **THE APPLICANTS**

The applicants are a married couple who reside in Mombasa. The couple initially got married under both Kisii and Kamba customary law, but in the year 2012 they solemnized their union at the Office of the Registrar in Mombasa. Their marriage certificate serial No. [particulars withheld] is proof of this fact. The couple have not been blessed with any children in their six (6) years of marriage hence their decision to adopt a child.

I have carefully perused and have put into consideration the Social Enquiry report prepared by the Adoption Agency. The 1<sup>st</sup> applicant was born and raised in Kisii County. His parents and some of his siblings still live there to date. The 1<sup>st</sup> applicant is a lawyer by profession and currently works as a Land Registrar in Mombasa. The 2<sup>nd</sup> applicant was born and raised in Makueni County. She did a diploma in Law and is currently pursuing a business degree at the Kenya Methodist University in Mombasa. Each of the applicants was raised in a normal traditional setting. They both retain close ties with their family members who do at times visit the couple in Mombasa.

The applicants live in a rented accommodation in the Nyali area of Mombasa. They also own a property in Kitengela. Their home was visited. It was found to be spacious and well appointed. The house has running water and electricity and was found to be conducive for raising a young child.

The couple are both in good physical and mental health. The 1<sup>st</sup> applicant is a professional and holds a good job in the public service. The 2<sup>nd</sup> applicant was running a business but has now left it to enable her pursue her degree. She therefore is able to spend much time in the home which will certainly be of benefit to the child. The couple both profess the Christian faith and attend St. Stephens Church in Tudor. They have a letter of recommendation from their Pastor which indicates that they both serve in the Youth Ministry of the church. When they appeared before me the applicants confirmed that they both understood the legal obligations arising from an adoption order. I am convinced that the applicants were a mature couple with a genuine desire to give this child a home. I am satisfied that both are suitable adoptive parents.

### **THE CHILD**

The child who was born at the Provincial Coast General Hospital in Mombasa was abandoned in the newborn unit of the hospital at birth. The abandonment was reported to Makupa police station. She remained in the hospital for a further two months but no person came forward to claim her. The child was then taken to the Mji wa Salama Home. On 9<sup>th</sup> November, 2012 by a court order from the Tononoka Children's Court, she was committed to the same home for care and protection. On 23<sup>rd</sup> November, 2012 the child was released to the applicants under a Fostering Agreement.

Based on the fact of abandonment of this child at birth, and given that almost two years later no person has come forward to claim her, and taking into account the letter dated 21<sup>st</sup> November, 2012 from Makupa police station confirming that police efforts to trace her biological kin have been unsuccessful, I am satisfied that the child was free for adoption. There is no known person from whom consent for this adoption can be sought and/or obtained. I therefore waive all requirements for consent in line with section 159 (1) of the Children Act, 2001.

### **THE APPLICATION**

Article 53 (2) of the Constitution of Kenya provides

**“A child’s best interests are of paramount importance in every matter concerning the child.”**

This is mirrored by section 4(a) of the Children Act which requires a court to give priority to the ‘best

*interests'* of the child in determining any matter concerning children. In this case this child was abandoned by her birth mother. She now has the opportunity to be raised in a normal loving home environment. I have perused the Home Report prepared by the Children's Department. It indicates that the child has already bonded with the applicants. This was also evident when the parties appeared before me. I am satisfied that this adoption does serve the best interest of the child. I therefore grant prayers (4) and (5) of this Originating Summons. No order on costs.

**Dated and delivered in Mombasa this 17<sup>th</sup> day of September, 2014.**

**M. ODERO**

**JUDGE**

In the presence of:

Mr. Magiya for Applicants

Court Clerk Mutisya