



**REPUBLIC OF KENYA**

**High Court at Mombasa**

**Adoption Cause 14 of 2011**

**IN THE MATTER OF: CHILDREN'S ACT NO. 8 OF 2001**

**AND**

**IN THE MATTER OF: AN APPLICATION BY E. E. A. AND E. M. W. FOR AN ORDER OF ADOPTION**

**AND**

**IN THE MATTER OF: ADOPTION OF S. W. I. (THE CHILD)**

**AND**

**E. E. A. .... 1<sup>ST</sup> APPLICANT**

**E. M. W. .... 2<sup>ND</sup> APPLICANT**

**JUDGMENT**

(1) By Originating Summons dated 15<sup>th</sup> September 2011, the applicants who are, respectively, husband and wife seek to adopt the child the subject of these proceedings with whom they have lived since 2010 under a Care Agreement with Imani Rehabilitation Agency. An adoption society M/s KKPI Adoption Society has filed a Home Visit Report of 23<sup>rd</sup> June 2010, with a follow up on 15<sup>th</sup> April 2011. The Guardian Ad Litem has also filed his report dated 9<sup>th</sup> January 2012. The Applicants' uncle, Mr. J. O. O. has filed a consent to be the guardian of the child in the event of inability or demise of the proposed adoptive parents. The Applicants' counsel has made submissions on the matter and judgment was reserved.

(2) Pursuant to section 163 of the Children's Act 2001, I have considered the application for adoption of the child the subject of these proceedings by the said Applicants. I have noted that the child whose date of birth is unknown was abandoned after birth and recovered by the Police on 18<sup>th</sup> December 2008 when her age was estimated as one day. It is clear that the best interests of the child lie with securing a home and family environment for the child to ensure that her rights and needs are provided for. Since the parents are unknown, their consents cannot be secured and the matter must be dealt with on the basis of the waiver of consents pursuant to section 159 of the Children's Act.

The Applicants are husband and wife, aged 42 and 39 respectively, of Christian faith who although without children of their own are desirous of adopting the child the subject of these proceedings. The couple owns a plot, a motor vehicle [particulars withheld] and each operate businesses as taxi driver and saloonist, respectively. I have noted the positive reports filed by the KKPI Adoption Society on home visit and follow up on 30<sup>th</sup> April 2010 and 15<sup>th</sup> April 2011, and by the Guardian Ad Litem dated 9<sup>th</sup> January 2012.

(3) Accordingly, I find the Applicants to be suitable persons to adopt the child the subject of these

proceedings with whom they have lived for the 2 years, in order to secure a home and parental care for the child. In the circumstances of the unknown parents the consents required under section 158 (4) (a) would be waived.

(4) For the reasons set out above, I grant the Applicants' Originating Summons dated 15<sup>th</sup> September 2011 as prayed in prayers (a) (b) and (c) thereof. I further appoint the proposed Guardian J. O. O. as the child's guardian for purposes of section 164 of the Children's Act 2001.

**Dated and delivered this 9<sup>th</sup> day of November 2012**

**EDWARD M. MURIITHI**

**JUDGE**

In the presence of: -

Miss Ngugi for the Applicants

No appearance for the Children Officer

Linda Court Clerk