

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI LAW COURTS)

ADOPTION CAUSE NO.155 OF 2009

IN THE MATTER OF THE CHILDREN ACT, 2001

AND

IN THE MATTER OF BABY J *aka* M.O.S – MINOR

W.A.S.....1ST APPLICANT

P.M.S.....2ND APPLICANT

J U D G M E N T

The applicants, W.A.S and P.M.S, are husband and wife. They were married in Kisii District on 26th December 1982 under the **African Christian Marriage and Divorce Act**. The applicants have been blessed with four (4) children aged between 26 and 16 years. The children are all daughters. Both applicants are advocates by profession. The applicants wish to adopt a male child because of their desire to raise a male child in their family. Baby J (the child) is presumed to have been born on 14th March 2006. The child was abandoned by his biological parents at Soweto village in Nairobi on the same 14th March 2006. The matter was reported to Soweto police station. The child was admitted to the Missionaries of Charity Children's Home on 15th March 2006. The Children's Court Nairobi committed the custody of the child to the said Children's Home on 7th February 2007. Efforts by the police and other relevant authorities to trace the whereabouts of the biological parents of the child have been unsuccessful. This court therefore dispenses with the consent of the biological parents of the child for the purpose of these adoption proceedings. The child was declared free for adoption on 28th January 2010 by Child Welfare Society of Kenya adoption society. A certificate to that effect is in the court file. The child was placed under the care and custody of the applicants on 15th February 2008 for compulsory foster care pending these adoption proceedings.

The applicants were assessed by Child Welfare Society of Kenya adoption society and by the Director of Children's Services. The two organizations recommend the application by the applicants to adopt the child. P.B.O, the guardian ad litem, also prepared a report which is favourable and recommends the proposed adoption. This is a local adoption. As stated earlier in this judgment, the applicants are a married couple who have expressed their wish to adopt a male child. The applicants are Kenyan citizens by birth. They established that they have the financial and emotional capability and capacity to take care of the child. In the period of more than three (3) years that the child has been in the applicants' custody, it was evident to the court that the child has bonded with them. The child considers the applicants to be his parents. All the relevant agencies have recommended the adoption. This court is of the view that the applicants have fulfilled all the legal requirements for a local adoption.

This court formed the opinion that it would be in the best interest of the child for the child to be adopted by the applicants. The applicants will provide a home and a family for the child to grow up and be a useful member of the society. The applicants will be required to execute an undertaking that they 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 in their marriage; they have been made aware that once the adoption order is issued, it shall be final and binding during the lifetime of the child that they shall adopt; that the child shall have the right to inherit their property; that an adoption order cannot be recanted, and further, that they shall not give up the child owing to any subsequent unforeseen behaviour or other changes in the child.

The court will therefore allow the applicants' application to adopt the child. They have fulfilled the legal conditions for a local adoption by a married couple. The applicants, W.A.S and P.M.S, are hereby allowed to adopt baby J. Henceforth, the child shall be known as M.O.S. J.K, J.K.S and E.K.S shall be the legal guardians of the child should misfortune befall the applicants. The Registrar General is hereby directed to enter this adoption order in the Adoption Register. The guardian ad litem is hereby discharged. It is so ordered.

DATED AT NAIROBI THIS 27TH DAY OF APRIL, 2011

L. KIMARU

JUDGE