



**REPUBLIC OF KENYA**

**HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**ADOPTION CAUSE 95 OF 2006**

**IN THE MATTER OF THE CHILDREN ACT, 2001**

**AND**

**IN THE MATTER OF BABY JW ( A CHILD)**

**JUDGMENT**

By originating summons dated 16.06.06 and filed on 28.06.06 stated to be brought under sections 154; 156 (1); 157 (1); 158 (1) (a), (4) (a); 159 (4), (6), (7), (8) (a); 160 (1), (2), (4); 163; 164 (1) and 170 of the Children Act, No.8 of 2001 and section 24 of the Interpretation and General Provisions Act, Cap.2, JOO and RAO of care of P.O. Box [Particulars withheld], Buruburu, Nairobi applied, *inter alia*, for the following substantive order, namely:-

THAT the applicants be authorised to adopt BABY JW, to be known as LOO.

The applicants were represented by learned counsel, Mrs J.N. Onyango.

Salient facts pertaining to the application may be summarized as under.

The applicants are Kenyan citizens. They are husband and wife, respectively, having got married to each other in 1987, i.e. about 20 years ago under customary law and later solemnized their marriage at Nairobi under the African Christian Marriage and Divorce Act, Cap.151 on 23.04.06. Regulation 19 (d) of the Children (Adoption) Regulations, 2005 (Legal Notice No.43 of 2005) provides that adopters, in the case of joint applicants, should have been married for at least three years prior to the date of commencement of adoption arrangements. The applicants' initial marriage was under customary law some 20 years ago. They are Christians and they decided to solemnize their marriage on 23.04.06 as indicated above. The requirements of regulation 19 (d) of the Children (Adoption) Regulations have been met.

The 1<sup>st</sup> applicant, JOO was born on 13.08.62 and is aged around 45 years. The 2<sup>nd</sup> applicant, RAO was born in 1967 and is aged around 40 years. He child to be adopted, Baby JW was born on or about 06.09.04 and is aged around 2  $\frac{3}{4}$  years.

Section 158 (1) (a) of the Children Act is to the effect that for the applicants to qualify as adoptive parents, they or at least one of them should have attained the age of 25 years and be at least 21 years older than the child but should not have attained the age of 65 years. These statutory age requirements have been met.

The 1<sup>st</sup> applicant works as an Electrician with k[particulars withheld]Corporation and earns a net salary of Kshs.20,000/= per month. The 2<sup>nd</sup> applicant works as a Secretary/Receptionist with B Limited and earns a net salary of Kshs.30,000/= per month. The two of them (applicants) also run a business of supplying and distributing fruits and vegetables in Nairobi and get from this business an income of about Kshs.20,000/= a month. The applicants live in their own house at Kitengela. They have no biological children owing to medical problems on the 2<sup>nd</sup> applicant's part and they have decided to attain parenthood via the adoption route. They have identified the child to be adopted as their next of kin.

The child to be adopted, a Kenyan boy, is reckoned to have been born on or about 06.09.04. He was abandoned in Kisii village, South B in the Industrial Area of Nairobi. He was collected by one RN and handed over to Industrial Area Police Station. Later he was admitted to Thomas Barnados House from where the applicants took custody of him and he has been under the applicants' foster care since 14.01.05.

The Child Welfare Society of Kenya

gistered adoption society in Kenya, has declared the child free for adoption.

The guardian *ad litem*, B K has vide her affidavit sworn on 06.06.07 reported that bonding between the child and the applicants has taken place and she recommends the proposed adoption.

The Director, Children's Services has vide his report dated 11.04.07 also recorded that bonding between the child and the applicants has taken place. The Director, too, recommends the proposed adoption.

The applicants are practising Christians and intent to bring up the child in the same faith.

I am satisfied on evidence tendered before court that the applicants have the requisite financial means to cater for the needs of the child; that the applicants meet the legal requirements and social parameters for adoptive parents; that the applicants are fit and proper persons to adopt the child; and that it is in the child's best interests to be adopted by the applicants. As the child was abandoned at birth, I dispense with his biological parents' consent to the proposed adoption. Accordingly, I make an order under section 154 (1) of the Children Act, 2001 authorising the applicants, JOO AND RAO to adopt the child, BABY J W who shall henceforth be known as LOO.

The Registrar-General is directed to make appropriate entries in the Adopted Children Register as required by law.

Orders accordingly.

**Delivered at Nairobi this 20<sup>th</sup> day of July, 2007.**

**B.P. KUBO**

**JUDGE**