



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**FAMILY DIVISION**  
**ADOPTION CAUSE NO. 137 OF 2019**  
**IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001 AND THE ADOPTION RULES**  
**AND**  
**IN THE MATTER OF ADOPTION OF FA**  
**(MINOR)**  
**AND**  
**IN THE MATTER OF AN APPLICATION OF ADOPTION BY JJO AND ETO**  
**JUDGMENT**

1. Before this Court is the Ex-Parte Originating Summons dated **14<sup>th</sup> October 2019** in which the following orders are sought:-

- a. THAT** the Applicants, **JJO** and **ETO** be authorized to adopt the child currently identified and known as **FA (CHILD)**.
- b. THAT** the child be renamed **FAO**.
- c. THAT** the child be presumed to be a Kenyan Citizen and as a consequence, be entitled to the rights and benefits of a Kenyan Citizen, including being issued with a Kenyan passport whenever desired.
- d. THAT** the Registrar General makes the appropriate entries in the Adopted Children Register.
- e. THAT** this Court do issue such further orders as are in the interest of justice.

The Summons was canvassed by way of viva voce evidence. Parties appeared before the Court through the online platform on **17<sup>th</sup> December 2020**, for hearing of the cause.

2. The Applicants in this adoption cause **JJO** (1<sup>st</sup> Applicant) and **ETO** (2<sup>nd</sup> Applicant) are a couple who have been in a stable marital union for the past nineteen (19) years having solemnized their union through a wedding conducted at the **[Particulars withheld] Church** on **27<sup>th</sup> October 2001**. Annexed to the Originating Summons (Annexure **JJO'6'**) is a copy of their Marriage Certificate **Serial No. [...]**. Both Applicants are citizens of Kenya as evidenced by copies of their National Identity Cards which are also annexed to the Summons. (Annexures **JJO'4'** and **JJO'5'**). The couple have no biological children of their own hence the desire to adopt a child.

3. The Applicants told the Court that they received the subject child into their custody in **December 2006**. That they have lived with and raised the subject child since then providing for all her needs. The subject child is now aged **fourteen (14) years** old and is currently in **Class 8** at the **[Particulars withheld] Primary School** in **Nairobi**. The Applicants indicate that they wish to adopt the child in order to formalize their relationship. They both state that they fully comprehend and accept all the legal implications of an adoption order. That they will accord the child all the rights and obligations due to a biological child, including the right to inherit.

4. The child in question **FA** was born on or about **7<sup>th</sup> June 2006**. The child was abandoned at the age of three (3) days at **Majengo Slums** in **Nairobi**. A good samaritan rescued the baby and reported the matter at **Shauri Moyo Police Station** vide **OB No. [...]** of **10<sup>th</sup> June 2006**.

Thereafter the child was committed to care and protection of **Thomas Barnados House** which is where the Applicants met her. The couple were matched with the child and she was released into their custody on **4<sup>th</sup> December 2006**. She has lived with the Applicants as their child since that time.

5. **MK** was the Guardian ad Litem in this matter. She prepared and filed in Court her report dated **27<sup>th</sup> July 2020** recommending the Adoption. The Children's Department also filed in Court their Report dated **15<sup>th</sup> April 2020** prepared by **MARY ATATI** a Children's Officer, recommending the Adoption.

#### **ANALYSIS AND DETERMINATION**

6. I have carefully considered the evidence adduced in this matter, the Affidavits filed as well as the various reports on record. **Section 159(1)** of the **Children Act Cap 141, Laws of Kenya** provides for the legal prerequisites for an order of Adoption as follows:-

**“159(1) No arrangement shall be commenced for the adoption of a child unless the child is at least six (6) weeks old and has been declared free for adoption by a registered Adoption Society in accordance with the Rules prescribed in that behalf.”**

7. In this case the subject child having been born in **June 2006** is now about **14<sup>1/2</sup> years old** far well above the six (6) weeks age limit provided for by law. The **Kenya Children's Home Adoption Society**, a registered Adoption Agency have issued a Certificate **Serial No. [...]** dated **15<sup>th</sup> April 2010** declaring the child free for Adoption. I therefore find and hold that all the legal requirements for the making of an Adoption order have been met.

8. This Court is required to assess the suitability of the Applicants as adoptive parents for the subject child. As stated earlier the Applicants have been legally married to each other for the past **nineteen (19)** years. They have remained committed as a couple despite the fact that they have no biological child together. The Applicants are committed Christians and both are involved in Church Ministry. The **1<sup>st</sup>** Applicant is a Senior Pastor at the **[Particulars withheld] Church** whilst the **2<sup>nd</sup>** Applicant is also a Pastor in the same Ministry.

9. The Applicants together earn a net income of about **Kshs. 5000,000/-** per month which is more than adequate to provide for the needs of the child. They have annexed copies of their bank statements (Annexure **JJO'9**) to the Summons as evidence of their financial capability. A Home Visit conducted by the Children's Department revealed that the couple lives in their own Apartment located along **Riara Road in Nairobi**. The Apartment was found to be spacious with enough room and facilities to raise the subject child. It was noted that security in the area was also very good with regular police patrols. Aside from this Apartment the couple also owns a House in **South B** from which they derive a rental income to boost their finances. They also own land in their rural home in **Homa Bay County**.

10. The Applicants have appointed as legal guardians **SO** the **2<sup>nd</sup>** Applicant's brother and his wife **HAO**. The said legal guardians gave written confirmation of their willingness and consent to act as legal guardians in the event that the two Applicants are unable to care for the child (Annexure **JJO '31'**).

11. The Applicants are both in good health as evidenced by their Medical Reports issued by the **Aga Khan University Hospital** which were annexed to the Summons (Annexure **'JJO11A'** and **'JJO11B'**). Finally they have annexed copies of their Certificates of Good Conduct issued by the Kenya Police confirming that neither has a criminal record (Annexure **JJO'13'** and **JJO'14'**). Based on the above I am satisfied that the Applicants are indeed suitable adoptive parents for this child.

12. In deciding upon any matter invoking a child Courts are obliged to give priority to the best interests of the said child. **Section 4(2)** of the **Children Act** provides:-

**“(2) In all actions concerning children, whether undertaken by public or private social welfare institutions, Courts of Law administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.” [own emphasis]**

13. The child herein was abandoned fourteen (14) years ago when she was only three (3) days old. Since that time no person has come forward to claim the child. Efforts by the Police to trace the child's biological parents and/or relatives have been futile as evidenced by the final Police letter dated **16<sup>th</sup> October 2006** written by the **OCS Shauri Moyo Police Station** (Annexure **JJO'27'**).

14. **Article 14** of the **Constitution of Kenya, 2010** deals with the question of **Citizenship**. **Article 14(4)** provides as follows:-

**“(4) A child found in Kenya who is, or appears to be, less than eight years of age and whose nationality and parents are not known, is presumed to be a citizen by birth.”**

The subject child was found abandoned in Kenya being only three (3) days old. Accordingly said child is presumed to be a citizen of Kenya by birth.

15. The subject child has lived with the Applicants from the age of six (6) months in **December 2006** to the present. I have no doubt that the child has bonded with the Applicants. Indeed they are the only parents / family she has known for the past fourteen (14) years.

16. I was able to observe the subject child on the online platforms. She was a pretty, exuberant and confident girl who was clearly thrilled at participating in the online Court session. She repeatedly waved and smiled at the camera and was obviously very comfortable in the company of the Applicants. The child told the Court that she was very happy to be adopted by the Applicants and confirmed that she lives

with the couple in their home. The child already has a relationship with the Applicants herein as well as with the extended family. She views them as her parents. The child herself has given her consent to this Adoption. This accords with **Section 76(3)(a)** of the **Children Act** which provides:-

**“(3) Where the Court is considering whether or not to make an order with regard to a child, it shall have particular regard to the following matters-**

**a. The ascertainable feelings and wishes of the child concerned with reference to the child’s age and understanding.”**  
**[own emphasis]**

17. The Children Department have recommended this adoption and I am in agreement. It is my view that this Adoption will certainly serve the best interests of this child. Accordingly I allow this application and I make the following orders:-

1. The Applicants **JJO** and **ETO** are hereby authorized to adopt the child known as **FA**.
2. The child shall be renamed **FAO**.
3. The child is declared a citizen of Kenya by birth in line with **Article 14** of the **Constitution of Kenya, 2010**.
4. The Registrar General is directed to make the relevant entry in the Adopted Children’s Register.
5. No orders on costs.

Dated in **Nairobi** this **5<sup>TH</sup>** day of **FEBRUARY, 2021** .

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**MAUREEN A. ODERO**

**JUDGE**