



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**FAMILY DIVISION**  
**ADOPTION CAUSE NO. 79 OF 2018**

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

**AND**

**IN THE MATTER OF ADOPTION OF CHILD JW.**

**AND**

**IN THE MATTER OF AN APPLICATION FOR ADOPTION BY**

RNW.....1<sup>ST</sup> APPLICANT

JBO.....2<sup>ND</sup> APPLICANT

**JUDGMENT**

1. The applicants are a couple aged 53 and 33 years respectively. The first applicant is a Kenyan citizen while the second applicant is a citizen of Ireland. They were married on 4<sup>th</sup> October 2014. The marriage was blessed with one biological child on 21<sup>st</sup> August 2016. The applicants filed the originating summons on 20<sup>th</sup> June 2018 seeking to be allowed to adopt the male child who is estimated to have been born on 20<sup>th</sup> July 2007.
2. Child JW is the biological child of the 1<sup>st</sup> applicant. The biological father abandoned the child and relocated from Kenya when the child was still a baby and has neither been seen nor heard since 2010. The 1<sup>st</sup> applicant swore and signed an affidavit giving consent towards the adoption on 20<sup>th</sup> March 2018. The child was declared free for adoption under **section 156(1)** of the **Children's Act** by the Kenya children's home adoption society on 18<sup>th</sup> April 2018.
3. The court on 20<sup>th</sup> September 2018 appointed LK as guardian *ad litem* and ordered that she files a report after carrying out a social inquiry on the applicants. A similar report was sought from the Director of Children Services. Both reports were duly filed, and each recommended that the child had bonded well with the applicants however the Director of Children Services declined to recommend the process on the basis of the fact that the male applicant was a foreigner and there was a moratorium in place to that effect.
4. The applicants filed their submissions on 27<sup>th</sup> February 2018 which I have read and considered. It was their submissions that the consent of the biological father ought to be dispensed with, as he abandoned them and has not made contact for over (8) years. As regards the moratorium on inter country adoptions, it was their submissions that the application should not be barred on grounds of the moratorium on inter country adoptions as the 1<sup>st</sup> applicant was the biological mother of the child, with sole parental rights and responsibility of the child and the 2<sup>nd</sup> applicant was her husband who had lived in Kenya for the last eight years. It was their submissions that the child had bonded well with the 2<sup>nd</sup> applicant and he was the only father the child ever knew thus it was in the best interest of the child that the application be allowed. They relied on the case of **CC (Child) (2017) eKLR**, where the court found that the adoption application, where one of the applicants was the child's biological parent and the other was a foreigner resident in Kenya was a local adoption and not an inter-country adoption that would fall within the application of the moratorium.
5. In the case of **CC (Child) (2017) eKLR** the court held;

*Given the fact that baby c does not have any other known parent other than the step father (1<sup>st</sup> applicant) and biological mother (2<sup>nd</sup>*

applicant), she cannot be separated nor can she lead an independent separate life. She needs parental care, protection and guidance from parents and wherever possible resides with her parents. (See article 19 of the African Charter on the rights and welfare of the child and article 12 of the convention in the rights of the child). This being a kinship adoption, the same shall be classified as a local adoption.

Similar position was held in the case of **J.M. (minor) (2018) eKLR Adoption Case No. 259/2014 Nairobi** and in the case of **Baby I.J. (minor) (2015) eKLR**.

6. **Article 53(2) of the Constitution of Kenya 2010** provides that “A child’s best interests are of paramount importance in every matter concerning the child.” further **Sections 4(2) and (3)** of the Children’s Act provide that “in all actions concerning children all public and private bodies, courts of law and legislative authorities, when exercising powers under the Act, shall treat the interest of the child as the first and paramount consideration to the extent that this is consistent with adopting a course of action calculated to (a) safeguard and promote the rights and welfare of the child; (b) conserve and promote the welfare of the child, and (c) secure for the child such guidance and correction as is necessary for the welfare of the child and in the public interest.”

7. **The court takes cognance of the Moratorium on Inter-Country Adoption of Kenya Children**” that was declared on 27<sup>th</sup> November 2014 by the Cabinet. The Cabinet approved an indefinite moratorium on inter-country adoption of Kenya children by foreigners, and also revoked all licences to conduct adoptions in Kenya with immediate effect. Either way each case shall be determined on its merits (**see the case, In re M (Baby) [2017] eKLR**). In the instant case the applicants have demonstrated their ability to provide a conducive home and family environment in which the child will grow and develop. **The 2<sup>nd</sup> applicant has been resident in Kenya since 2014 and together with the 1<sup>st</sup> applicant have a permanent residence in south B. They were further blessed with their biological child on 21<sup>st</sup> August 2016.**

8. **I note that the applicant is the only father the child knows and has well bonded with her. Consequently the court** finds that it is in the best interest of the child to be adopted by the applicants. They will assume all parental rights and obligations of the biological parents of the child once adopted, and shall treat her as if she was borne to them. They have been made aware that once the adoption order is made, it shall be final and binding during the lifetime of the child. The child shall have the right to inherit their property. The applicants shall not be able to give up the child owing to any subsequent unforeseen behaviour or other changes in the child. This court dispenses with the consent of the child’s biological father.

9. Having been satisfied that all the legal requirements for a local adoption under the **Children Act** have been met, the following orders shall issue:-

- a) **The applicants RNW and JBO are hereby allowed to adopt Child JW;**
- b) **child JW shall henceforth be known as JWO;**
- c) **The child’s date of birth shall be 27<sup>th</sup> December 2008, and shall be presumed Kenyan by birth;**
- d) **GG and RWK are hereby appointed to be the child’s legal guardians in the event of the death or incapacity of the applicants before she is of full age and fully self-reliant;**
- e) **The Registrar-General is directed to enter this adoption in the Adopted Children Register; and**
- f) **The guardian *ad litem* is hereby discharged.**

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 16<sup>TH</sup> DAY OF MAY, 2019

J.N. ONYIEGO

JUDGE