



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**ADOPTION CAUSE NO. 30 OF 2019**

**IN THE MATTER OF THE CHILDREN ACT NO. 8 OF 2001**

**AND**

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

**BABY V J alias G alias Abandoned Child**

**RWKS.....APPLICANT**

**JUDGMENT**

1. The Applicant herein RWK S (hereafter referred to as the Applicant) filed this Originating Summons dated 11.3.2019 seeking authority to adopt Baby VJ alias G alias Abandoned Child (hereafter referred to as the child).
2. The Applicant is an adult Kenyan Citizen born on 11.5.1969 married to one HMS since 27.6.1998.
3. The husband of the applicant consented to the adoption of the child and has sworn an affidavit of consent.
4. The applicant is the Executive Director at [Particulars Withheld] Organization and she has attached her pay-slips to demonstrate financial stability to take care of the child.
5. She has also filed a medical report which shows that she is physically and emotionally fit and healthy to parent the child. The Applicant also stated that she has a medical condition (lupus) which is not a bar to her parenting of the child.
6. The Applicant has attached the certificate of good conduct and she states that she has never been convicted with any criminal offence.
7. The child was found abandoned outside the office of the Sub-chief of [Particulars Withheld] Sub location on 13.7. 2017. The matter was reported to Illasit Border Police Patrol Base and recorded in OB No. [xxxx].
8. The Police took the child to Rombo Mission Hospital for treatment and the matter was reported to Loitokitok Sub-county Children's Office and a temporary placement was obtained at Ngeleku children Centre and a vacancy was sought at Thomas Barnados House, in Nairobi.
9. In January 2018, the child was formally committed to the care and custody of Kenya Children's home vide Care and Protection case No. 1 of 2018 by the Children's Court at Loitokitok.
10. Thereafter, the child was transferred from Ngeleku Children's Centre to Thomas Barnado's House with the full knowledge of and co-operation of Children's office in Loitokitok and Illasit Border Police Station.
11. The Police also confirmed that after investigations, the child's biological family was not located.
12. The Child was declared free for adoption on 18<sup>th</sup> July 2018 by Kenya Children's Home Adoption Society vide Certificate No. xxxx 2018 under **Section 159(1) (a) (i)** of the Children Act which states that:

***“Abandonment may be presumed if the child appears to have been abandoned at birth or if the person or institution having care***

*and protection of the child has neither seen nor heard from a parent or guardian of the child for a period of at least six months.”*

13. The following reports were filed in respect of the Child:

- (i) Kenyan Children’s Home report dated 10.4.2019.**
- (ii) The Director Children’s Services report dated 3.6.2019**
- (iii) The Guardian Ad Litem’s report dated 17.10.2019.**

14. I have considered the originating summon together with the Affidavits filed herein and the reports and I find that the Applicant meets the threshold for adoption of the child.

15. I accordingly find that it is in the best interest of the child that the Adoption be allowed. The biological parents of the child could not be traced and it is not possible under the circumstances to obtain their consents.

16. In the matter of **L.O (CHILD)[2012] Eklr** the court stated that :

*“For the avoidance of doubt, the rights and duties of the biological parents of the child are hereby extinguished and all the parental rights, duties, obligations and liabilities of the child, JMM , now vest in and shall be exercisable by and enforceable against the Applicants as the adopter parents as if the child were born in wedlock to the adopter parents and the child, to all intents and purposes, now stands to the adopter parents as a child born in wedlock and both adopter parents shall henceforth be the lawful father and mother of the child.”*

17. All the reports are favourable and I allow the Originating Summons in the following terms:

- (i) THAT the Applicant be and is hereby authorized to adopt Baby VJ alias G alias Abandoned child.**
- (ii) THAT the child shall be known as MZS**
- (iii) THAT the child shall be presumed a Kenyan Citizen.**
- (iv) THAT the child’s date of birth shall be 7.7.2017 and place of birth shall be Loitoktok.**
- (v) THAT the Registrar general and is hereby directed to enter this order in the Adopted Children Register.**
- (vi) THAT the Director Immigration be and is hereby authorized to issue the child with a Kenyan passport.**
- (vii) THAT RWK be and is hereby appointed legal guardian of the child in the event of death or incapacity of the applicant before the child attains the age of majority.**
- (viii) THAT the Guardian Ad Litem be and is hereby discharged.**

Orders to issue accordingly.

**DELIVERED, DATED AND SIGNED IN OPEN COURT THIS 1<sup>ST</sup> DAY OF NOVEMBER, 2019**

**ASENATH ONGERI**

**JUDGE OF THE HIGH COURT OF KENYA, NAIROBI.**