

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO.88 OF 2017

IN THE MATTER OF THE CHILDREN ACT

AND

IN THE MATTER OF AN APPLICATION FOR ADOPTION OF BABY OM

BWM.....1ST APPLICANT

FMM.....2ND APPLICANT

JUDGMENT

The applicants **BWM** and **FMM** are seeking to be authorized to adopt **baby OM** hereinafter referred to as the child. They seek that upon making the adoption the child be called **AOM**. They also seek that **JMK** and **NAK** be the Legal Guardians of the child in the event of death or incapacity of the applicant before she is of full age.

BWM and FMM are 39 and 41 years respectively. The applicants were married on 8th November 2008 at Parklands Baptist Church. FMM is a DRC – Congo national and has been a legal resident in Kenya since 1994. He is a permanent resident of the Republic of Kenya by virtue of the Certificate of Permanent Residence issued by Director of Immigration Services dated 10th April 2017.

BWM is employed as a Principal Strategy Officer at [particulars withheld] Limited in Nairobi while FMM is a Liason Officer in the [particulars withheld] Secretariat with [particulars withheld] Church in Nairobi. The applicants are currently residing in their home in Nairobi Kileleshwa [particulars withheld]. As per the Report tendered by KKPI Society filed on 28th September 2017 Baby O was born on 9th December 2015 and was found abandoned in a bush in Nakuru and the matter was reported at Keringet Police Station vide OB X/11/12/2015 as per the Department of Children Services Report of 4th December 2017 now 3rd May 2018 as evidenced by a letter from the said police station dated 11th December 2015. The child was taken to New Life Children’s Home Trust on 23rd 2015 where the child was named OM. The child was committed to the custody of the New Life Children’s Home by Senior Resident Magistrate at the Molo Children’s Court under protection and care **Case No. 1XX of 2015** on 23th December, 2015.

The child was declared free for adoption by KKPI on 19th September 2016 and issued with a certificate declaring a child free for adoption serial number. The child was placed with the applicants for bonding on 15th August 2016 as per the foster care pending adoption agreement dated the same day and has been in their care ever since. The applicants are both of good health and do not have any criminal record and have not been convicted of any offence referred to in schedule 3 of the Children’s Act 2001. The applicants are physically and emotionally fit and have sufficient financial resources to take care of the child. KKPI filed the report on 28th September 2011.

The Department of Children Services filed their report on 3rd May 2013. The officer in his report states that the applicants have met the legal requirements for local adoption and that they are capable of taking care of the child. The officer informed the Court that the male applicant is a foreigner and according to the Cabinet Moratorium, he is not allowed to adopt since he is not a Kenyan citizen. The Director of Children Services advised abiding by the moratorium which bar inter county adoptions.

The Guardian *ad litem* report was filed on 4th December 2017 recommends the adoption. The guardian ad litem observed that the child has bonded well with the applicants and has adjusted to his new home. Beatrice has for the time they have been with them and that the applicant has made arrangements to enroll on a training seminar as a mother and son.

Although the applicants have has fulfilled all the legal requirements relating to the adoption of the child. There are disparities in details of where the child was found from the 2 Reports of Department of Children Services and Adoption Agency. The 1st applicant is a Kenyan citizen by birth while the 2nd applicant is a foreigner. Although he filed copies of documents granting him present residence in Keya the moratorium is still in force. The applicants have jointly acquired fixed assets in form of land and other properties in Kenya. They are financially stable and capable to provide for the needs of the child. It was evident that in the period that the applicants have had the custody of the child, the child bonded well with them.

This Court finds that in light of the current moratorium still in effect this court cannot grant the orders sought in the applicants summons. The applicants have a right to appeal. It is so ordered. Cost in the cause.

DATED, SIGNED AND DELIVERED THIS 12TH DAY OF NOVEMBER 2018.

M. W. MUIGAI

JUDGE- FAMILY DIVISION HIGH COURT

IN THE PRESENCE OF;

MR. MWENDA FOR THE APPLICANT

PATRICK KINUTHIA COURT CLERK