



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**ADOPTION CAUSE NO.15 OF 2015**

**IN THE MATTER OF THE CHILDREN ACT NUMBER 8 OF 2001**

**AND**

**IN THE MATTER OF AN APPLICATION FOR ADOPTION OF BABY Z K**

**R N G.....APPLICANT**

**JUDGMENT**

The applicant **R N G** is seeking to be authorized to adopt **baby Z K** hereinafter referred to as the child. She seeks that upon making the adoption the child be called **W M N M**. She also seeks that **M W M** be the Legal Guardian of the child in the event of death or incapacity of the applicant before she is of full age.

The applicant is a Kenyan citizen holder of Identification card no. xxxx. The applicant was born on 27th July 1973. She was married to P G K on 12th April 1997. She has been separated from him for over 6 years and that her Church forbids divorce. That is the reason she has not commenced divorce proceedings against him. There is no issue in the said marriage. Several attempts to obtain consent from her estranged husband has not borne fruits. The applicant had previously adopted another child one A N N in **Adoption Cause No xxx of 2012**. The court in the said matter dispensed with her estranged husband's consent and she finalized the same as evidenced by the court order of 12th March 2013.

The applicant is a business woman involved in embroidery work. She lives in **Dandora Phase 2**. She has the financial means and capability to care for a child. She is physically and emotionally fit and has never been convicted of any offence as regard **Section 158(3) of the Children's Act** and has received positive recommendations. She was approved to adopt the child by the Kenya Children's Homes Society sitting on 12th March 2014.

The child is said to have been born on 25th November 2012 and was found abandoned on 29th November 2012 at Oasis of love Church within Langas Primary School in Gilgil. The matter was reported to Gilgil Central Police station as OB No. 24/25/11/2012 as evidenced in the police letter dated 29th January 2013. The matter was also reported to the Gilgil District Children's Officer and the child was referred to the Africa Gospel Church Baby Centre, Nakuru on 29th January 2013 for temporary care and protection. The said home prepared a social inquiry dated 29th January 2013 in respect of the child as well as prepared a placement plan detailing the child's proposed arrangements for normal daily care and health. The child was committed by the Nakuru Children's Court under **Protection & Care Case No. 521 of 2013**. The police as per their final letter dated 23rd January 2014 stated that no one had come forward to claim the child. Accordingly, the child was declared free for adoption by Kenya Children's Home Adoption Society on 12th February 2014 and issued with a certificate declaring a child free for adoption serial no. 1042. The child was placed with the applicant for bonding on 31st March 2014 and has been in her care ever since.

Kenya Children's Homes Society filed their Report on 2<sup>nd</sup> February 2015 confirmed placement of the child with the Applicant and recommended the adoption. The Department of Children Services filed their report on 7th February 2017. The report recommends the local adoption as the officer observed that the applicant has fulfilled the legal requirements as provided under the **Children's Act 2001**. The applicant has bonded with the child and though she is a female applicant adopting a male child there are special circumstances in that she has previously adopted a female child. The officer found the applicant to be fit and capable of taking on parental responsibility and she is financially able to provide for the child. That it is in the best interests of the child to grow up in a home which the Applicant offers.

The guardian ad litem report was filed on 21<sup>st</sup> March 2018. The guardian ad litem recommends the adoption. The guardian ad litem observed that the applicant relates well with the child. The child was happy, comfortable and settled in his new home. The applicant is financially capable to give the child all the basic needs and is growing well physically, emotionally and mentally.

The applicant has averred that her marriage to her husband has irretrievably broken down and as such getting his consent for the adoption of the child is not possible. No evidence has been adduced to contradict this. It is only just to dispense with her estranged husband's consent and proceed with the adoption. This court finds that the applicant has fulfilled all the legal requirements relating to the adoption of the child and

is satisfied that the applicant is qualified and able to take care of the child. She is financially stable and capable to provide for the needs of the child. It was evident that in the period that the applicant has had the custody of the child, the child bonded well with her.

**DISPOSITION**

- a) **This Court finds that it would be in the best interest of the child to be adopted by the applicant. I allow the application for adoption.**
  
- b) **The applicant R N G is hereby allowed to adopt Baby Z K and he shall henceforth be called W M N M.**
  
- c) **M W M sister to the Applicant shall be the child's Legal Guardian in the event of death or incapacity of the applicant before he is of full age.**
  
- d) **I direct the Registrar General to enter this order in the adoption register. The child was born in Kenya on 25<sup>th</sup> November 2012 in Gilgil and is therefore a Kenyan Citizen by birth and is entitled all the rights that accrue to Kenyan citizens under the Kenya Constitution 2010 and the Kenya Citizenship and Immigration Act.**
  
- e) **I hereby discharge the Guardian ad litem. It is so ordered.**

**DATED, SIGNED AND DELIVERED THIS 12<sup>TH</sup> DAY OF NOVEMBER 2018.**

**M. W. MUIGAI**

**JUDGE- FAMILY DIVISION HIGH COURT**

**IN THE PRESENCE OF;**

**MS. NGUGI FOR THE APPLICANT**

**PATRICK KINUTHIA COURT CLERK.**