



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**ADOPTION CAUSE NO.283 OF 2014**  
**IN THE MATTER OF THE CHILDREN ACT NUMBER 8 OF 2001**

**AND**

**IN THE MATTER OF AN ADOPTION OF BABY T (INFANT)**

**A K W &**

**S M K .....APPLICANTS**

**JUDGMENT**

1. **A K W** and **S M K** hereinafter referred to as the applicants are seeking to be authorized to adopt baby **T (the Infant)**. That if allowed the infant name to be changed from baby **T to J N K**. That the Registrar General do make the appropriate entries in the Adopted Children Register and that baby T be issued with a birth certificate but with no reference to parents as adopter or adopters and with no reference to the child as adopted.

2. The applicants in their statement in support of the application aver that they are Kenyan citizens and live in Nairobi. That they received baby Tashly into their care and possession on the 28<sup>th</sup> of May 2014 and that she has been continuously in the care and possession since then. They got married in 2000 under African customary law and later solemnized their marriage in 2007. They have no biological children of their own.

3. Child Welfare Society of Kenya filed their report dated the 7/7/2014. According to the said report baby T was found abandoned at Gikomba Market along Kombo- Muniyiri road by a Good Samaritan Sam Mundia who reported the matter at Kamukunji Police Station under OB No. [Particulars withheld]. Child Welfare Society of Kenya (CWSK) rescued the infant from the police on the 4/5/2013 and reported the matter to the children's office who dully committed the infant to (CWSK) Mama Ngina Kenyatta Children's Home for care and protection under protection case no. 338 of 2013 on the 16<sup>th</sup> of September 2013. Efforts to trace the whereabouts of the parents or relatives of the child proved futile and no one claimed that child according to the police. CWSK too did not receive any claim of the said abandoned child despite efforts through media to trace her kin. The child was declared free for adoption on the 7<sup>th</sup> of July 2014 vide certificate no. [particulars withheld]

4. CWSK investigations indicate that the applicants desire to adopt for reasons of not being able to have their own biological children, they desire to have a child to complete their union and they also want to have an heir and for longevity of their familial name. They are financially stable, own property, have no criminal record and are in good health. They have a full time help who takes care of the child and their house. They desire that the child will have quality education and they have set up an account for her for

the purposes of having sufficient funds for her education. Their extended family have embraced the adoption and have been supportive. CWSK recommends that the applicants are suitable prospective adoptive parents in line with the provisions of section 177 (7) (b) of the Children Act 2001. That they were placed with the child on the 28<sup>th</sup> of February 2014 for foster care, custody and guardianship after rescue and since then CWSK has made continued assessments of the applicant in relation to the child's transition into the family. That the applicants have bonded well with the child and they recommend the adoption.

5. The Director of Children services filed their report on the 23/11/2015. After conducting their investigations this is what they found out. The child was abandoned as per the police report. They give a detailed background of the applicants' education, marriage, their financial ability and home environment, their views on inheritance together with the reasons for adoption. It was observed that the child has settled, the applicants have adequate resources and they have a stable marriage which has not been affected with their inability to have children. It was however observed that the child was placed for purposes of adoption prior to declaration. The Director however observes that this a local adoption where the applicants have fulfilled the requirements for local adoption under the Children Act. The child who was abandoned has bonded with the applicants. That because the child was placed with the applicants for purposes of adoption prior to the declaration it makes it difficult for the Director to unreservedly recommend the proposed adoption but they leave the final decision to the court.

6. The guardian ad litem filed her report on the 17/10/2016. In it she states that she visited the applicants in their home several times and found the child happy, she feels secure and loved and enjoys good health. That she has started schooling. She recommends that the applicants be allowed to adopt baby T.

7. At the hearing of this matter the officer from CWSK explained that after the police gave their letter dated the 23/1/2014 which was the final letter, they declared the child free for adoption and they marched the child with the prospective adopters and placed the child with the applicants on the 28/2/2014. That the certificate was left and was only done on the 7/7/2014 and that the child was freed before the adoption. This court will accept the said explanation but warn the adoption agency CWSK that all processes must be followed and documented aptly to eliminate any possible suspicion in the manner in which the placement was done and a child declared free for adoption. A certificate freeing any child for adoption must issue first before any child who has been abandoned is given to any prospective adoptive parent/s.

8. From the reports filed and analyzed by this court the applicants qualify to adopt the infant. **Section 159 (a) (i)** of the Children Act 2001 provides that “ **abandonment may be presumed if the child appears to have been abandoned at birth or if the person or institution having care and possession of the child has neither seen nor heard from a parent or guardian of the child for a period of at least six months**”. The infant baby T was abandoned at birth. **Section 119 (1) (a)** of the Children Act 2001 provides “**that a child is in need of care and protection, one who has no parent or guardian or has been abandoned by his parent or guardian**”. The applicants have been assessed and found to be persons who are responsible caring and love the infant. They want to provide a home for a child. Their love for the child is noted in the manner in which they have taken care of the child from the time of placement.

9. This is a local adoption and this court finds that it is in the best interest of the child to authorize the applicants to adopt the child. I however decline to grant their request that the child's birth certificate should make no reference to the parents as adopters and that there should be no reference to the child as adopted. These are facts the applicants must accept. This court therefore authorizes **A K W** and **S K** to adopt baby T (the infant). The names of the infant shall change from baby **T** to **J N K**. The Registrar General shall make entries in the Adopted Children's Register. The child shall be presumed to be a Kenyan having been born in Kenya. The Guardian ad litem **J K** is hereby discharged. It is so ordered.

Dated signed and delivered this 2<sup>nd</sup> of day **February 2017**.

**R.OUGO**

**JUDGE**

**In the presence of:**

.....**For the Applicants**

**M/s Charity Court/ clerk**