



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**FAMILY DIVISION**  
**ADOPTION CAUSE NO. 59 OF 2016**  
**IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001**  
**AND**  
**IN THE MATTER OF AN ADOPTION ORDER**  
**FOR**  
**J M (MINOR)**  
  
**J M .....CHILD**  
  
**VS**  
  
**MR E S M .....APPLICANT**  
  
**MRS D M W M .....APPLICANT**  
  
**JUDGMENT**

The Applicants in this matter are citizens of Kenya. They are married under Civil Marriage 1990 in Kitale. The 1<sup>st</sup> Applicant in this resides Nairobi West along Kodi Road and works for gain in Kenya. He is a dentist. He also resides at the said premises with his wife 2<sup>nd</sup> Applicant their children including the child to be adopted.

The 2<sup>nd</sup> Applicant is a Lecturer, at [Particulars withheld] University in the United States of America (U.S.A) where she relocated in the year 2011. She currently resides in Kenya but would like to permanently move to United State of America (U.S.A) with her family including the child in this matter should the court grant the adoption orders. She resides in with the first Applicant who is her husband.

The couple have been blessed with four biological children (one son and three daughters), namely; W M M. born on 21<sup>st</sup> December 1988 who is currently studying and working as a nurse. M N M born on 12<sup>th</sup> August 1993, who studies in [Particulars withheld], N C M born on 17<sup>th</sup> September 2000 and S M aged 28 years and working in the banking sector in U.S.A. The Applicants also have previously adopted two children from Uganda namely; N J K born on 22<sup>nd</sup> October 2008 and O J H born on 15<sup>th</sup> October, 2009.

The Child Welfare Society of Kenya have submitted a report stating that the couple are financially stable, they are aware of the child's right to inheritance once adopted. The Directorate of Criminal

Investigations, Police Clearance Certificates of serial numbers [Particulars withheld] herein show that the Applicants have been cleared as having no criminal record and the same has been further stated in this report.

Further the report states that the couple is of sound mind and capable of fulfilling their duties and responsibilities as parents. Further according to this report, the couple stated that their reason for adopting the two children from Uganda was that their biological children had all grown up and gained a sense of independence which left them feeling somewhat lonely. All the children of this home have unanimously accepted the child who is the subject of this matter into their family and they consider her a sister. The first two biological children are working and living on their own. The couples are of the Christian Religion and both belong to the [Particulars withheld] church.

The child in this matter is a minor aged 6 years old. According to the Bungoma County Children Officer's report, the child was abandoned in an maize plantation at [Particulars withheld] Trading Center and was rescued and taken to the police by a Good Samaritan. The report was made at Wabukhonyi Police Patrol Base on 05/09/2009 vide O.B [Particulars withheld]. The child was found abandoned by Good Samaritan; M W on 4<sup>th</sup> September, 2009.

She explained further that the baby had been abandoned in her farm. Seeing as it was raining and it was dark she took care of the child then reported the matter to the police the next morning.

She also reported the matter to the area chief and kept the baby until 20<sup>th</sup> September 2009 when she gave the child to her employers; E M and his second wife who are parents to the male Applicant in this matter. This was because she was unable to care for the child. The Good Samaritan named the child J N M. Later the late E M and his wife, due to their advanced years were unable to offer proper care to the child. It is then that the Applicants undertook to care for the child and have been living with her since 2014. The child is currently pursuing her education at a good school where she is at the pre-unit level. The Applicants thus desire to accord her a permanent since she has a limbo family status. The report further states that adopting the Child would be in her best interest.

A report of these events is documented by the Sub County Children Office Vide letter dated 28<sup>th</sup> July, 2016. According to the report made by the Child Welfare Society of Kenya, they conducted an interview with the M W at home on 20<sup>th</sup> May, 2016 and she confirmed the incident. The couple has nurtured a trusting relationship with the child to the extent that she recognizes them as parents.

The prospective adoptive parents have been assessed pursuant to **Section 177(7) of the Children's Act 2001** and have been found to be suitable adoptive parents. M P O was appointed as and gave her consent to act as Guardian ad Litem in this matter and she reports that the child was abandoned by an unknown person as an infant on 5<sup>th</sup> September 2009 in [Particulars withheld] and was rescued by Good Samaritans and taken to the home of the late E M. She has known the Applicants for the past 30 years and knows them to be very respectable people in society. The couple has previously adopted two children who have bonded with baby J M.

She has visited the Applicants in their home and confirms that they and their children are emotionally psychologically and economically ready to offer themselves to baby J and have embraced her. The child in this matter is well balanced and is well fitted into the lives of the Applicants. The adoption would be in her best interest.

The Director of Children Services filed the Report and recommended the adoption. However, the Department raised issue with the Adoption Agency operating a current adoption agency certificate. During the proceedings Counsel presented a copy of Judicial Review Case Number 164 of 2014 that resolved the issue of the Adoption Agency's operation. Also produced in Court was the Kenya Gazette of 23<sup>rd</sup> May, 2014 that established Child Welfare Society as a State Corporation. The Court is satisfied with the explanation that the Adoption Agency is operating as a legal entity. The Adoption agency filed Report that recommended the adoption.

The Court has considered the relevant reports and they recommend the adoption. The parties were in Court and the child seemed to have bonded well with the family. The Applicants have met the legal requirements. They have demonstrated that they are socially, financially able to provide, care and protection of the child.

Mr. E S M and Mrs. D M W M application to adopt J N M is granted. She is presumed to be a Kenyan citizen and her place of birth is Bungoma County, Kenya. Her date of birth shall be 4<sup>th</sup> September, 2009. The legal guardian shall be W M eldest biological daughter of the Applicants in case of any eventuality to the Applicants.

The Registrar General is hereby ordered to enter this order into the Adoption Register.

The guardian *ad-litem* is hereby discharged.

**DELIVERED SIGNED & DATED IN OPEN COURT ON 6TH MARCH, 2017.**

**M.W.MUIGAI**

**JUDGE**

**IN THE PRESENCE OF;**

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