



**REPUBLIC OF KENYA**

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

**ADOPTION CAUSE NO. 114 OF 2015 (OS)**

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

**IN THE MATTER OF ADOPTION OF BABY N Alias BABY P**

**BY**

**JWW (APPLICANT)**

**JUDGMENT**

1. The Applicant JWW is a Kenyan citizen. She is single and has no child of her own. She wishes to adopt the child known as Baby N Alias Baby P a minor of the female sex through the Originating Summons dated 27<sup>th</sup> February, 2015. The Applicant indicates that she is a Counsellor with Health Strat. She resides in [Particulars Withheld] and she professes the Christian faith.
2. According to records held by the Thika Police Station, the child who is the subject of these adoption proceedings was abandoned at the New Born Unit, Thika Level 5 District Hospital on 14<sup>th</sup> May 2013 immediately after birth. The matter was recorded vide OB No. [Particulars Withheld] on 6<sup>th</sup> June, 2013. She was officially committed on 19<sup>th</sup> June, 2013 by the Thika Children's Court, vide P&C No. 195 of 2013.
3. The child was declared free for adoption by Little Angels Network on 26<sup>th</sup> March, 2014 as per Section 156 of the Children Act 2001 as confirmed by certificate serial No. [Particulars Withheld]. She was released into the custody of the Applicant for mandatory foster care pending adoption on 1<sup>st</sup> May, 2014 upon her signing a Foster Care Agreement dated the same day. Since then she has been in the continuous custody and care of the Applicant.
4. Prior to the hearing of the adoption application, Little Angels Network prepared and filed a report in court declaring the Applicant suitable to adopt. Thika Police in their letter dated 28<sup>th</sup> January, 2014 to the Director Open Hand Children Home stated that following their investigations the biological parents of the child were not traced, nor did anyone come forward to claim the child.
5. The Adoption Society, guardian ad litem and the Director of Children's Services have all made home visits and established that the Applicant is financially and emotionally capable of providing for the up keep and education of the child.
6. The Director of Children's Service's report dated 27<sup>th</sup> October, 2016 recommended the adoption, for reasons that the child knows the Applicant as her parent and is attached to her. That she has also bonded well with the Applicant. The guardian ad litem, Mr. [Particulars Withheld] also filed a report dated 2<sup>nd</sup>

August, 2016 that was favourable and recommended the adoption of the child by the Applicant.

7. The Adoption Society, guardian ad litem and the Director of Children's Services have all established that the Applicant is financially and emotionally capable to provide for the up keep and education of the child.

8. The Director of Children Services' report recommended the adoption for reasons that the child stands to gain the opportunities provided by becoming the daughter of the Applicant. That if the adoption is granted the child will grow up in a loving home rather than in an institution. That the child having been abandoned it means that the biological parent did not desire to raise her.

9. Of note is that the orders sought by the Applicant relate to a child. In law, in any matter concerning a child, the best interests of the child are paramount. **Article 53(2)** of the **Constitution** provides the guiding principle on this question as follows:

**“A child's best interests are of paramount importance in every matter concerning the child.”**

This principle also finds expression in the **Children Act No. 8 of 2001** and in particular **Section 4(3)** thereof. The Applicant's opportunity or desire to have a child of her own is therefore only of secondary importance.

10. The child appears to have thrived. She is healthy and happy under the care of the Applicant. She was in court during the hearing and appeared to have bonded well with the Applicant. She clearly considered her as her parent. The court also observed that the Applicant being aged 41 years is older than the child who is now age 3½ years by more than 21 years and is not yet above 65 years of age. She therefore meets the requirements of the law on age.

11. After a careful assessment of the reports filed herein and from the observation of the interaction of the Applicant and the child during the hearing, I am satisfied that it is in the best interest of the subject child to be adopted by the Applicant.

12. In the premise I find that it is in the best interest of the child herein that I allow, as I hereby do, the application brought by way of Originating Summons dated 27<sup>th</sup> February, 2015 and order as follows:

- i. The Applicant JWW is hereby allowed to adopt Baby N Alias Baby P, who shall henceforth be known as **NW**.
- ii. Her date of birth is 14<sup>th</sup> May, 2013, and her place of birth shall be Thika, in Kenya.
- iii. JNW (brother to the Applicant), is hereby appointed legal guardian of the child in the event that the Applicant dies or is incapacitated by ill-health.
- iv. The Registrar General is hereby directed to enter this order in the Adoption Register.
- v. The Director of Immigration is hereby authorised to issue the child with a Kenyan passport.
- vi. The guardian ad litem is hereby discharged.

It is so ordered.

**SIGNED DATED** and **DELIVERED** in open court this **6<sup>th</sup> day of April, 2017**.

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**L. A. ACHODE**

**JUDGE**

**In the presence of .....Advocate for the Applicant**