

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 86 OF 2015

IN THE MATTER OF THE CHILDREN ACT, 2001

AND

IN THE MATTER OF BABY AR alias BABY KE

JSMAPPLICANT

JUDGMENT

JSM (“the Applicant”) is a sole female applicant. The Applicant has never been married. She is a beautician. She has no children of her own. The Applicant wishes to adopt a child. The Applicant seeks by her application to be allowed by this Court to adopt Baby AR alias Baby KE (hereafter “the child”). The child who is the subject of the present adoption proceedings was found abandoned on 25th December 2013 at Kiganjo Estate within Thika Town. She was presumed to have been born on the same day. A report on the matter of the abandoned child was made at Makongeni Police Station and the same was recorded vide OB No. 44/25/12/13. The child was taken to Thika Level 5 Hospital for medical attention. The Thika District Children’s Office was informed of the incident and managed to secure a temporary placement for the child at Limuru Children Centre where the child was admitted on 16th January 2014 and this is evidenced by the child’s admission form into the said home.

The Senior Principal Magistrate Children's Court sitting at Thika, in accordance with **Section 119** of the **Children Act**, committed the child to Limuru Children Centre on 5th February 2014 vide **P&C No 19/2014**. The child was placed in the custody of the Applicant on 27th August 2014 for mandatory bonding prior to adoption. The child has since then been in the continuous custody and care of the Applicant. According to correspondence from relevant police authorities at Makongeni Police Station, no one has come forward to claim the child. A report to that effect has been filed in Court. Thus, this Court dispenses with the consent of the child’s biological parents to the proposed adoption of the child by the Applicant. The Kenya Children’s Homes, an adoption society, issued a certificate declaring the child free for adoption pursuant to **Section 156(1)** of the **Children Act**. The said freeing certificate is no. 1133 and the same is dated 13th August 2014.

In an application filed on 2nd April 2015, the Applicant sought among others, orders from this Court that SWK be appointed as the child’s guardian ad litem, and that the Director of Children’s Services be ordered to investigate her suitability to adopt the child and submit a report. She further sought for an order that upon adoption the child be known as SMM. The Applicant also sought to have the Court appoint her brother SSM and his wife ANM as the child’s legal guardians. On 8th May 2015, this Court issued an order appointing SWK as the child’s guardian ad litem, and further directing the guardian ad litem and the Director of Children’s Services to file their respective reports in Court.

Pursuant to **Section 156(1)** of the **Children Act**, before this matter came up for hearing, Kenya Children’s Homes, the relevant adoption society, prepared and filed in Court a favourable report in respect of the proposed adoption of the child by the Applicant. Another report in respect of the proposed adoption of the child by the Applicant was prepared by the Director of Children’s Services, and this report was similarly in favour of the proposed adoption. The guardian ad litem, SWK, also filed the statutory report made under **Section 160(2)** of the **Children Act** in which she noted that the proposed

adoption of the child by the Applicant is in the best interest of the child.

All the statutory reports that have been filed in respect of the proposed adoption of the child by the Applicant have recommended that this Court allows the Applicant to adopt the child. This Court has evaluated the facts of this adoption. This is a local adoption. It is evident that the Applicant has fulfilled all the legal requirements relative to the adoption of the child. The consent of the biological parents of the child was dispensed with since the child was abandoned at birth, and her biological parents could not be traced to give their consent. This Court has satisfied itself that the Applicant is qualified and able to take care of the child. The home visits by the guardian ad litem, the Adoption Society and the Director of the Children Services established that the Applicant has the financial and emotional capability to provide for the upkeep and education of the child. This Court observed the Applicant with the child in Court and it was evident that in the period that the Applicant has had the custody of the child, the child has bonded well with her. The child considers the Applicant to be her mother.

On the basis of a careful examination of the documents presented before me as well as the observations made therein, this Court has formed the opinion that it would be in the best interest of the child to be adopted by the Applicant. Hence, this Court allows the Applicant's application. The Applicant, JSM, is hereby allowed to adopt Baby AR alias Baby KE. Henceforth, the child shall be known as SMM. Her date of birth shall be 25th December 2013. Her place of birth shall be Thika Level 5 Hospital. She is presumed to be a citizen of Kenya by birth. The Applicant's brother, SSM and his wife ANM shall be the legal guardians of the child should such eventuality arise. This Court directs the Registrar General to duly enter this order in the Adoption Register. The guardian ad litem is hereby discharged. It is so ordered.

DELIVERED AND SIGNED IN OPEN COURT AT NAIROBI THIS 7TH DAY OF MARCH, 2016

M.W. MUIGAI

JUDGE

In the presence of:

Mweni Nyokabi for Applicant