



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**ADOPTION CAUSE NO.164 OF 2015**  
**IN THE MATTER OF THE CHILDREN ACT NUMBER 8 OF 2001**

**AND**

**IN THE MATTER OF AN APPLICATION FOR ADOPTION OF BABY J S alias U**

**M A J.....APPLICANT**

**JUDGMENT**

1. The applicant **M A J** seeks to be authorized to adopt baby **J S alias U** and that upon making the adoption the child be called **J O**. They also seek that **P A K** and **T I** (her nephew and his wife) be appointed the legal Guardian of the child.
2. The applicant is a Kenyan citizen born in 1984, she is single, Christian by faith and does not have any children of her own. She is of good health and has no criminal record. She works as a fish monger.
3. The child is estimated to have been born on **27<sup>th</sup> April 2013** and was reportedly abandoned at the roadside at [Particulars withheld] village Nanyuki and rescued by good Samaritans who reported the matter to Nanyuki Police Station as OB no. [Particulars withheld]. The child was taken to Nanyuki District Hospital where he was admitted. Upon discharge he was placed with New Life Trust- Nyeri on 17/5/2013 and transferred to Nairobi awaiting committal. The child was committed to New Life Trust on 22/5/2013 by the Senior resident Magistrate at Nanyuki Law Courts vide protection and care case number 13/2013. The child was admitted at Life Home Trust - Nyeri on 16/05/2013 and later transferred to Kilimani on 17/05/2013 where the child was immunized as per Kenya Expanded Programme on Immunization guidelines. Baby J was declared free for adoption on 29th October 2014 vide certificate declaring a child free for adoption no. [Particulars withheld].
4. The report from the adoption agency was filed on the 9<sup>th</sup> July 2015. The guardian ad-litem report was filed on 27th October 2015. The guardian ad litem observed that J was in good health and comfortable clothes and seem to have bonded well with the applicant. The applicant is capable of meeting the child's physical and emotional needs. The report is favorable and recommends that the applicants are suitable to adopt and that they be allowed to adopt.
5. The report from the Director of Children's services was filed on 10th August 2015. Investigations reveal that the applicant is a strong and stable person not daunted by responsibilities of motherhood. The report however points out that the application is challenged by section 158(2) of the children's Act which provides that, "(2) An adoption order shall not be made in favour of the following persons unless the court is satisfied that there are special circumstances that justify the making of an adoption order—

*(b) a sole female applicant in respect of a male child;”*

6. When the matter came for hearing the applicant stated that she wanted a male child to inherit her property and did not want a girl as she would get married elsewhere. She expressed to the court that she had bonded well with the child and she loved the child. Though the applicant does not meet the provisions of Section 158(2) she has expressed willingness and love towards the child she wishes to adopt. Article 53 of the Constitution of Kenya, provides that a child is entitled to a name, education, basic nutrition, shelter and health care, parental care and protection, which includes equal responsibility of the mother and father to provide for the child. In instances where issue regarding the child arise the court should give prime consideration to the child’s best interests.

7. Section 4 of the Children’s Act, “(3) *All judicial and administrative institutions, and all persons acting in the name of these institutions, where they are exercising any powers conferred by this Act shall treat the interests of the child as the first and paramount consideration to the extent that this is consistent with adopting a course of action calculated to—*

*(a) safeguard and promote the rights and welfare of the child;*

*(b) conserve and promote the welfare of the child;*

*(c) secure for the child such guidance and correction as is necessary*

*for the welfare of the child and in the public interest.”*

8. J was found abandoned in a dumpster and the identity of the child’s parents is not known. As per the letter from Nanyuki police station dated 16th May 2013 indicates that no one has gone to claim the child. I therefore dispense with consent as per Section 159 of the Children’s Act.

9. This court in considering the application placed before this court it is of the view that the child’s best interest is to be adopted by the applicant who will provide basic needs ,education, offer love and affection and a feeling of family. I allow the application for adoption. The Applicant **M A J** is hereby allowed to adopt **Baby J S alias U** and he shall be henceforth called **J O. P A K** and **T I** (her nephew and his wife) shall be the legal Guardians of the child should misfortune befall the applicant. I direct the Registrar General to enter this order in the adoption register. The child was born in Kenya and is therefore a Kenyan 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. I hereby discharge the Guardian ad litem. It is so order.

Dated Signed and Delivered this **11th** Day of **November** 2016.

**R. E. OUGO**

**JUDGE**

**In the presence of:**

.....**For the Applicant Ms. Charity Court Clerk**