



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**ADOPTION CAUSE NO. 280 OF 2014**  
**IN THE MATTER OF ADOPTION OF BABY C D a.k.a. S**  
**And**  
**IN THE MATTER OF THE APPLICATION FOR ADOPTION**  
**BY**  
**J E O AND M O M (APPLICANTS)**

**JUDGMENT**

1. The applicants **J E O** and **M O M** seek to be authorised to adopt baby **C D a.k.a. S** and upon making the adoption the child be called **B S A O** and that **S M** (aunt to the 2<sup>nd</sup> applicant) be appointed the legal Guardian of the child should any misfortune befall the child.
2. The applicants are both 38 years having been born in 1976. The applicants have been married to each other since April 2002 and solemnised their marriage on 6<sup>th</sup> April 2013 at Madaraka P.A.G Church. The applicants have an adopted daughter **V A O** as evidenced by the orders of the court given on 14<sup>th</sup> May 2010. The 1<sup>st</sup> applicant is an administration police officer while the 2<sup>nd</sup> applicant is a tailor and homemaker. Neither of the parties has been convicted of a criminal offence and they are both physically and emotionally fit.
3. Baby **C D a.k.a. S** who the applicants seek to adopt was born on 25<sup>th</sup> July 2012 and was reported abandoned by the mother at Thika Level Five district Hospital on 28<sup>th</sup> July 2012. The matter was reported to Thika Police Station and recorded as OB number 43/3/7/2012. The matter was reported to the District Children's office at Thika who recommended admission at Macheo Children's home for care and protection. The child was subsequently committed to Macheo children's home vide order of Chief Magistrate's Court at Thika in protection and care in case no. 113 of 2012. The final letter from OCS Thika police Station indicates that no one has come forth to claim the child. The child was declared free for adoption on 8<sup>th</sup> November 2013 and issued with a certificate no. **[Particulars withheld]**. The child was placed with the applicants for foster care and guardianship on 25<sup>th</sup> February 2013.
4. The guardian ad litem report was filed on 5<sup>th</sup> march 2015. The reporter observes that the family has adopted well to baby S. The applicants believe in education and that their children should be well educated. The reporter on her said visits to the applicants home has observed that they are cordial, loving and comfortable and recommends the adoption.

5. The Department of Children’s services filed their report on 15th July 2015. The applicant’s family knows about the adoption and are supportive. It was observed that during the period the applicants have had custody of the child they have proved capable of taking parental responsibility of the child. The director noted that the child was placed with the applicants before being declared free for adoption. Although the director’s report bears reservation on this he leaves it to the discretion of the court to decide the fate of the adoption order. The report points out a technicality that the child was placed with the applicants for foster care before being declared free for adoption contrary to section 156(1) of the Children’s Act.

6. Article 159 (2) lays down principles to guide the court in exercising judicial authority — (d) provides that, “justice shall be administered without undue regard to procedural technicalities”;

In line with the above provision and in furthering the purpose and principles of this Constitution with special bias to Article 53 of our Constitution which seeks to protect the rights of a child in the said Article, sub - Article (2) provides that, “A child’s best interests are of paramount importance in every matter concerning the child.” Though this court notes that there is irregularity on the issue of the child, being placed with the applicants before being declared free for adoption I note that the same is a technicality and the rights of the child to parental care and protection and provision of basic nutrition; shelter and health care are paramount in this case. This court however would like to caution the parties involved with the adoption process to ensure due process in the adoption process is adhered to as this will eliminate suspicion and protect the interests of these children who are the main beneficiaries of this process. However, having considered the above and the reports filed herein this court has formed the opinion that it would be in the best interest of the child to be adopted by the Applicants.

7. The applicants’ application is allowed. The Applicants **J E O** and **M O M** are hereby allowed to adopt baby **C D a.k.a. S** who shall henceforth be called **B S A O. S M (aunt to the 2nd applicant)** shall be the legal Guardians of the child should misfortune befall the applicants. I direct the Registrar General to enter this order in the adoption register. The child was born in Kenya, is therefore a Kenyan by birth, and is entitled to 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.

Cost in the cause. It is so ordered.

Dated signed and delivered this **6<sup>th</sup>** Day of **November** 2015.

**R. E. OUGO**

**JUDGE**

In the Presence of:

.....**Applicants**

**Ms. Charity**

**Court clerk**