

IN THE MATTER OF BABY M a.k.a T.K

RULING

Before me is an application for an adoption order, dated 19TH May 2011, brought inter alia, under **Sections 154, and 160 of the Children's Act, 2001(Act No. 8 of 2001) and Sections 24 of the Interpretation and General Provisions Act (Chapter 2 of the Laws of Kenya)** (by dint of which the **Adoption Rules under the Adoption Act) (Cap 143)** (repealed) apply).

The applicants herein, **P.K.N** (the 1st applicant) and **V.M. K** (the 2nd applicant), a married couple of **P.O. Box [...]** have moved the court, praying that they be authorized to adopt and rename a baby girl, presently identified and known as **BABY M a.k.a T.W.K** who, for the purposes of this ruling shall, where necessary, be referred to either "**Baby M.**" or "**the child**". The applicants propose that she be known as **T.W.K** upon adoption.

Both applicants are Kenyan citizens. The 1st applicant is 44 years old while the 2nd applicant is 41. The couple was married under Kikuyu customary law in 1993, which marriage was later registered at the Thika District Officer's office on 3rd March 2009. They have no child of marriage. The applicants are farmers and earn over Kshs.10,000/= from their tea crop, horticultural crops and milk. They produce their own food and their only expense is a water bill. They also earn a tea bonus of Kshs.300,000 annually. The applicants have filed the requisite statement and affidavit in support of the application bearing all the supporting documents as necessary.

On 15th July 2011 on the applicants' application, Rev. J. K. Mof P.O. Box [...] was appointed the Guardian ad Litem for the purposes of this adoption. He has filed a comprehensive report received in court on 23rd September 2011, primarily stating that **the child, M** has bonded well with adoptive parents, is happily settled in their care and is well taken care of. He also vouches for the adoptive parents' moral and social capability to bring up the child in an upright manner and to provide for her social and material well being. The Director of Children's Services on the other hand has reported that the applicants are able to provide for the child in a manner that will guarantee not only her day to day needs and education but also guarantee her an inheritance. Both the guardian ad litem and the Director of Children's

Services highly recommend, therefore, that the applicants be granted the authority to adopt **the child, M**, and that the court grants them, also, the incidental prayers sought in the application, to complete the process.

At the hearing of the application, it was proved, through the documentation filed in support, that **“Baby M”** was born to one M.M.W on 7th July 2003. The mother took her to the Child Welfare Society of Kenya when the child was 3 weeks old, with the interest of giving her up for adoption.

After being counselled as to the legal implications of adoption, and being informed that she would lose her parental rights and duties over the child permanently, the mother nonetheless gave up the child for adoption, giving her initial consent on 28th July 2003. She never kept the appointment given for her to either give her final consent or take the baby back. At 6 weeks, **Baby M** was placed at Mama Ngina Children’s Home.

Having failed in their efforts to trace the mother of the minor, the Child Welfare Society of Kenya (CWSK) reported the matter to Langata police station who recorded the same as a case of abandonment *vides* OB No. 27/06/04/2010. Efforts by the police to trace the biological mother also proved fruitless. This is confirmed by the letter from Langata Police Station dated 11th November 2010.

The child has been under the continuous care and custody of the applicants since 22nd August 2003. They picked her up from the Mama Ngina Children’s Home when she was barely 1 ½ Months old.

On 28th March 2011 **Baby M** was certified free for adoption under a Certificate of Declaration to that effect issued by the Child Welfare Society of Kenya. The requisite studies and investigations have been carried out in regard to applicants’ suitability to adopt the child and requisite reports duly filed. The report by the Children’s Officer, ordered by this court on 15th July 2011 was filed on 23rd January 2012, recommending the adoption and renaming of **Baby M** by the applicants, who, according to the Director of Children’s Services have proved that they are both financially and socially capable of permanently fulfilling parental responsibilities over the child.

In considering this application, I have perused the reports filed by the Guardian ad Litem and the Director of Children Services, and thoroughly examined all the documentation filed in support thereof, including the Home

Study Report of the Child Welfare Society dated 28th March 2011. The applicants' suitability has been carefully assessed and positive recommendations filed by credible persons. I am satisfied that the applicants do possess the requisite legal capacity to adopt the child, and that they do understand the entire adoption process, and its future implications for themselves as a family and in particular, the need to provide the best for the adopted child all her life. I find them to be stable, medically fit and financially able to adopt **Baby M**. They have undertaken and bound themselves to bring her up as one of their own, in a healthy, happy and secure environment.

Considering the above, I have no hesitation in allowing the application, being satisfied that the proposed adoption is in the best interests of **Baby M**. Accordingly, the Originating Summons dated 19th May 2011 is hereby allowed and orders granted in terms of prayers 3, 4 and 5 thereof. The Registrar of persons shall make the appropriate entries in the register in recognition of this adoption.

The final consent of the biological mother is hereby dispensed with.

DATED, SIGNED and DELVIERED at NAIROBI this 2nd DAY OF March 2012.

M.G. MUGO

JUDGE

In the presence of :

Miss Muniafu for the applicant.