



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**ADOPTION CAUSE NO. 243 OF 2014**  
**IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001**

**AND**

**IN THE MATTER OF S S J O AN INFANT**

**JUDGMENT**

1. The applicant B A O seeks to adopt baby M an infant. The applicant filed an originating summons( O.S) before this court on the 21<sup>st</sup> of October 2014. She also seeks that upon making the adoption order the infant be known as S S J O. That the Registrar does make the appropriate entry in the Register.
2. On the same day the 21<sup>st</sup> of October 2014 the applicant filed a chambers application seeking orders that ;
  - i. R N C be appointed guardian ad litem
  - ii. That the court makes an interim order for custody, care, control and maintenance of the minor S S J O in favor of the applicant pending the hearing of the and final determination of the O.S
  - iii. That the court makes an interim order authorizing the applicant to leave with the minor S S J O outside the jurisdiction of the court , pending the hearing and final determination of the O.S.
  - iv. That the court makes an interim order authorizing the applicant to acquire a Kenya passport in the names of the minor S S J O
  - v. That the court makes a Wardship order in respect of the minor
  - vi. That the consent of the natural parents of the infant be dispensed with on the ground that the case falls within the ambits of section 159 (1) (a) of the Children's Act , especially that the persons whose content are required in respect of the adoption herein had abandoned the child and had neglected and failed to maintain the child.
3. When the matter came under certificate I declined to grant the orders for reason that the adoption process had not began in the proper way and also because of the status of the adoption society Child Welfare Society of Kenya, there was also no report from the Director of Children Services.
4. Through a chamber summons dated the 28<sup>th</sup> of November 2014 the applicant sought a review of the court's ruling dated that 18<sup>th</sup> of November 2014. Upon hearing the application and I reviewed the order I had made on the 18<sup>th</sup> of November 2014. This court then appointed R N C the guardian ad litem and ordered that the reports by the guardian and the director of children services be filed in court.

5. When the O. S was the applicant filed a statement in support of the adoption application and an affidavit. She claims in her statement that the infant has been in her care since March 2104 and has continuously receiving financial, material support and parental support. She attached an agreement with Hope House babies Home as a foster parent on the 1<sup>st</sup> of August 2014. The baby's name is indicated as R. The month indicated as March could be an error as the report and foster agreement show she received the child on the 1<sup>st</sup> of August 2014 and the child is called M not R .
6. The Child Welfare Society of Kenya the adoption agency filed its report on the 13/11/2014. The minor by then was known as baby M alias M. As per the said report the minor was found abandoned in a pit latrine on the 5<sup>th</sup> may 2013 by a good samaritan who reported the matter to Makindu police station vide OB/No. 15/5/2013.The child remained under close medical supervision until 6<sup>th</sup> June 2013 when she was referred to Child Welfare Society Kenya by the Children's office at Makeni . The child was committed to the actual custody of CWSK Mama Ngina Children's Home on the 24<sup>th</sup> of September 2013 but on finding that the said home was full CWSK placed the child at Hope House Babies Home an institution which CWSK partners with for care and protection of children. The child remained in the said home until she was placed with the applicant after a foster agreement was signed by the applicant.
7. CWSK recommendation is that the applicant is suitable to adopt the child pursuant to section 177 (7) (b) of the Children's Act. The report states that the applicant is committed to the process and understands her role, she has established a trusting relationship with the child, she has aided in the development of the child she has care and provided for the child and continues to do so. The child was declared free for adoption on the 10<sup>th</sup> of November 2014 and certificate serial No. **[particulars withheld]** issued by CWSK.
8. On the 22<sup>nd</sup> of December 2014 the Director of Children's Services filed a report. A home visit was made by an officer who found that the child seems happy and healthy and that the child has bonded well with the applicant and her biological son and that the house is conducive to bring up a child. The report further states that the applicant is socially and economically endowed to provide for the child and that she has demonstrated that she is capable of taking care of the child and that she is suitable to adopt. The Director observed that the child was committed to Mama Ngina Children's Home and yet the child was placed with the applicant by Hope House Children's Home. That it was not clear when the child was transferred to Hope House from Mama Ngina Children's home. It was also observed that the child was declared free for adoption on the 10<sup>th</sup> of November 2014 after the child was already placed with the applicant on 1<sup>st</sup> August 2014 and that this is in contravention of section 156 of the Children Act 2001. The Director sought that these issues be clarified by the freeing agency to the satisfaction of the court.
9. The adoption agency did explain why the child had to be moved from Mama Ngina Children's home that it was full and that she was placed at Hope House Babies an institution they partner with and that the applicant took her from the said home to be under her care as a foster parent something she agreed to do by signing the consent form. The report from the guardian ad litem is also favorable. I accept the reasons given by the adoption society. The consent of the natural parents of the infant is dispensed with as the case falls within the ambit of section 159 (1) (a) of the Children Act.
10. The child baby M was found abandoned .She has been declared free for adoption, the applicant she been with the child since August 2014 and they bonded well as a family. I observed the same in court. I also note that at the time the applicant took the child she was sickly and the

applicant has taken care of her and has provided a good home for the child. The applicant states in her application that the reason she came to court in the manner she did is because she has been appointed newly appointed as the Deputy High Commissioner/ Head of Kenyan Mission in New Delhi India and she wants to take the child with her and has not yet travelled to her new posting as she desires to have the legal process completed. Counsel requested this court to consider the O.S and to grant the orders.

11. After considering the reports, the law and submissions, this court has formed the opinion that it would be in the best interest of the child to be adopted by the applicant. I allow the application for adoption. The applicant, **B A O (B. A. O)** is hereby allowed to adopt **Baby M**. The child shall henceforth be known as **S S J O**. The applicant's aunty **M A A** shall be the legal guardian of the child should such eventuality arise. I direct the Registrar General to enter this order in the adoption register. The child is also declared to be Kenyan by birth as she was born in Kenya and was abandoned she 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. It is so ordered.

Dated signed and delivered this **24<sup>th</sup>** day of **December 2014**.

**R. E. OUGO**

**JUDGE**

In the presence of the;-

.....**For the Applicant**

.....**Court Clerk**



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