



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KIAMBU**  
**ADOPTION CASE NO. 15 OF 2019**  
**IN THE MATTER OF THE CHILDREN'S ACT**

AND

**IN THE MATTER OF BABY D.K (THE CHILD)**

AND

**IN THE MATTER OF AN APPLICATION FOR ADOPTION**

BY

M N K.....APPLICANT

**JUDGMENT**

1. The female applicant herein, filed an originating summons application dated 23<sup>rd</sup> October 2019 seeking to adopt **baby D.K.**, a female child.
2. The background of how the child was declared free for adoption is well documented in this file. On 23<sup>rd</sup> January 2015 a lady who suffers from mental illness took home the baby, yet that lady had not been pregnant nor had she given birth. The lady's family reported the matter to the **Nakuru Police station**. The matter was booked in the occurrence book, as **OB NO. 5/23/1/15**. By letter dated 23<sup>rd</sup> January 2015, the said police station requested **African Gospel Church Baby Center** to offer care and protection to the child. The Children's Court at Nakuru admitted the child in that home for a period of 3 years.
3. The police confirmed by letter dated of 2<sup>nd</sup> September 2015 that they had not received any claim for the child. In part this is what the police letter of that date stated:

***“Based on our investigation no one has come forward to claim for the minor and attempts to trace his (sic) kindred have been futile.”***
4. There is further evidence that the family members of the mentally ill lady tried to trace the family of the child to no avail. The **Little Angels Network Adoption Society** mounted its own investigation, and they were unsuccessful since the mentally ill lady was unable to provide information of where she got the child. That adoption society concluded that the child, who has remained unclaimed, needs an alternative family and they were of the view that the child will benefit from being adopted instead of remaining in an institution for the rest of her life.
5. The child was thereafter declared free for adoption by Little Angels Network, a registered Adoption Society.
6. The child was placed with the applicant, under foster care, on 19<sup>th</sup> June 2017 and has been under her care since then.
7. The applicant is a teacher. She is of good health and has not been previously convicted of any crime. The applicant avers that she has a stable job and lives in a comfortable environment suitable for bringing up the child. She filed copies of her bank statements, a medical report and a police clearance certificate in support of her application.
8. The Children Officer filed a report dated 23<sup>rd</sup> March 2021. The officer noted that the child has bonded well with the applicant and

recommends the adoption.

9. The *guardian ad litem* is also in support of the adoption. The report reveals the child has bonded well with the applicant and is thriving physically and mentally. It is also clear from the report that the applicant has the support of the extended family in this adoption.

10. The parent/guardian of the child, if any is unknown, and all attempts to trace them has been unsuccessful. An adoption application requires that it be accompanied by a consent, amongst other requirements, of the parent/guardian: See **Section 158 (4)** of the **Children's Act** (hereafter the Act). Having considered the background information set out above I am of the view that this is a case where this court can dispense with the requirement for such a parent/guardian to give their consent to this adoption. Such dispensation is provided for under **Section 159 (1) (c)** of the Act, as follows:

*(1) The court may dispense with any consent required under paragraphs (a), (b), and (c) of subsection (4) of section 158 if it is satisfied that:-*

*(a) ...*

*(b) ...*

*(c) in any case, except in respect of the consents required under paragraphs (e) and (f) of subsection (4) of section 158 that the person whose consent is required cannot be found or is incapable of giving his consent or that his consent has been unreasonably withheld.*

11. This court does hereby dispense with the requirement of the consent of the parent/guardian of the child.

12. The applicant has met all the legal requirements for adoption under the Children's Act. The court is also satisfied that the applicant understands the responsibilities attendant to adopting the child.

13. It is the court's view that it is in the best interests of the child to grant the adoption order.

#### **DISPOSITION**

14. In view of the foregoing I grant the following orders:

- i. **M.N.K** is hereby allowed to adopt **baby D.K**
- ii. **Baby D.K** is presumed to be a Kenyan citizen by birth and is presumed as having been born on 7<sup>th</sup> January 2014 in Nakuru County.
- iii. **Baby D.K** shall henceforth be renamed **D.R.N.**
- iv. **S.K.N** is hereby appointed the legal guardian of **baby D.R.N**
- v. The **Registrar General** is hereby directed to make the appropriate entries in the Adopted Children's register.
- vi. The consent of the biological parent/s or guardian is hereby dispensed with.

**JUDGMENT DATED AND DELIVERED AT KIAMBU THIS 21ST DAY OF FEBRUARY, 2022.**

**MARY KASANGO**

**JUDGE**

Coram:

**COURT ASSISTANT: - MOURICE**

**FOR THE APPLICANT: N/A**

**COURT**

**JUDGMENT DELIVERED VIRTUALLY.**

**MARY KASANGO**

**JUDGE**