



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MARSABIT**

**ADOPTION CAUSE NO.E001 OF 2020**

**IN THE MATTER OF APPLICATION FOR ADOPTION OF DT (CHILD) BY**

**MK.....1<sup>ST</sup> APPLICANT**

**PM.....2<sup>ND</sup> APPLICANT**

**RULING**

The applicants herein who are man and wife respectively have filed an application dated 27th October 2020 seeking to adopt a child by name of DT (herein after referred to as the subject child), a boy aged 3 years. They are also seeking for orders that the Registrar- General be directed to enter the names of the child in the Adopted Children Register in the prescribed form and further that upon granting the adoption orders that the court appoints Mrs. RCD of ID No.xxxx and Mr. HD of passport no. xxxx as the legal guardians of the subject child.

The 1<sup>st</sup> applicant is a pharmaceutical technologist working at [Particulars withheld] while the 2<sup>nd</sup> applicant is a lay missionary with the [particulars withheld].

The subject child was abandoned by its minor teenage mother after birth at Marsabit County Referral Hospital due to cultural factors. The child was then placed under the care of the Missionaries of Charity Sisters. The mother was taken to Machakos Children Rescue Centre where she continued with her education. At the age of 4 months the child was placed under the foster care of the applicants with whom he has been living with since then.

The Children`s Department wrote a report on the suitability of the applicants adopting the child. The report indicates that the mother to the child has since attained the age of majority upon which she was discharged from the Rescue Centre and is continuing with her education in Machakos. That she has no intention whatsoever of taking back the child and neither does her family have any interest in bringing up the child.

The report further indicates that the applicants are aged 40 and 42 years respectively and that they have two children of their own. That they are financially stable with a family house and a car. That they are a good-hearted couple who took in the child at a very vulnerable age. That as a result of their care, the child is in very good health and is emotionally attached to his foster parents and the other two children in the family. The report recommends adoption by the applicants.

I have considered the application, the documents attached to the application and the report of the Marsabit County Children Officer. Section 156(1) of the Children Act 2001 (herein referred to as the Act) prohibits commencement of adoption arrangements unless a child has been declared free for adoption by a registered adoption society. The subject child was declared free for adoption by the KKPI Adoption Society vide a certificate dated 24<sup>th</sup> September 2019. The stated section was therefore complied with in this matter.

The mother to the subject child was a minor at the time when adoption arrangements commenced. Section 158(4) of the Act requires for an application for an adoption to be accompanied by the written consents of, inter alia:

(a) a parent or guardian of the child and

(b) in the case of a child born out of wedlock whose mother is a child, the consent of the parents or guardian of the mother of the child.

As the mother to the child in this matter was a minor when adoption arrangements commenced, she could not give a valid consent to the adoption. Her parents did not give the requisite consent. There was no application for the court to appoint a guardian for the mother when the adoption arrangements commenced. The relatives to the mother of the child and particularly her aunt who purported to act as guardians did not have capacity to give out the child for adoption as they were not legal guardians. The provisions of section 158(4) of the Act were thereby not complied with.

However, the court has power under the provisions of section 159(1) of the Act to dispense with the referred to consent where it is satisfied that:

(a) in the case of the parents or guardian of the child, that he has abandoned, neglected, persistently failed to maintain or persistently ill-treated the child:

Provided that-

(i) abandonment may be presumed if the child appears to have been abandoned at birth or if the person or institution having care and possession of the child has neither seen nor heard from a parent or guardian of the child for a period of at least six months;

(ii) .....

The subject child was abandoned at birth at Marsabit County Referral Hospital upon which it was taken to the Home of Hope ran by the Missionary of Charity Sisters. Ever since neither the mother to the child nor her relatives has had any contact with the child. They have all along been aware of the adoption proceedings and have been unwilling to come to court. I am satisfied that the child was abandoned at birth and neither his mother nor his relatives have shown any interest in him. I thus dispense with the consent required under the provisions of section 158(4) (a) and (b) of the Act.

From the documents filed in court, there is no doubt that the applicants are fit persons to adopt the subject child. They are of the appropriate age to adopt a child. They are in good health and are financially stable. The child has been in their care since when he was 4 months old and they have given him the parental care that he needed at a vulnerable age. The child has never known any other parents other than the applicants. It is in the best interests of the child that he be adopted by the applicants. I thereby make an adoption order in this matter authorizing the applicants to adopt the subject child herein. Consequently, and in pursuance of section 170(1) of the Act, the Registrar-General is directed to make an entry in the Adopted Children Register in the prescribed form in respect to the subject child.

Section 164(1) of the Act gives the court power to appoint any person to be a guardian of the child in the event that the adopter dies or becomes incapacitated before the child is of full age. However, this is qualified by the requirement that the guardian has to be approved by the adopter and his consent has to be given in writing. In this matter, the purported consent by the proposed guardians is dated 16.1.2018, which was way before even the subject child was born. I do not think that it is a valid consent. The proposed guardians have not thereby given their consent in writing. The application to appoint them legal guardians is declined.

In view of the foregoing, I make the following orders:

(1) An order of adoption is hereby made authorizing the applicants to adopt a child by the name of DT.

(2) The Registrar-General is hereby directed to make an entry of the relevant details of the said child into the Adopted Children Register in the prescribed form.

Orders accordingly.

**DELIVERED, DATED AND SIGNED AT MARSABIT THIS 30<sup>TH</sup> DAY OF JUNE 2021.**

**JESSE N. NJAGI**

**JUDGE OF HIGH COURT**

In the presence of:

1<sup>st</sup> Applicant present

2<sup>nd</sup> Applicant present

Court Assistant Godana

30 days R/A.