



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KISII**

**ADOPTION CAUSE NO.1 OF 2013**

**IN THE MATTER OF THE CHILDREN ACT**

**AND**

**IN THE MATTER OF BABY GB AKA ABM (MINOR)**

**MM**

**ZBM.....APPLICANTS**

**JUDGMENT**

1. The applicants, **MM** and **ZBM** vide re-amended Originating Summons dated 12<sup>th</sup> February 2013 and further amended on 6<sup>th</sup> August 2019 seek the following orders; to be authorised to adopt **GB** aka **ABM**, and that **AMK** be appointed the legal guardian of the child. The applicants further seek that the child be presumed to be a Kenyan citizen and the Registrar General make the appropriate entry in the Adopted Child Register of the child as **ABM**.

2. Kenyans Peace Initiative Adoption Society filed its report concerning the child on 26<sup>th</sup> June 2019. The report indicates that the child was born on 29<sup>th</sup> July 2006. He was found abandoned and the matter was reported to Kahawa Sukari Police Post vide OB number [xxxx]. The child was committed to the care of HappyLife Children Home on 6<sup>th</sup> November 2009 by the Children's Court in Nairobi vide Protection and Care No. 471 of 2009. The child was placed under the care and control of the applicants on 2<sup>nd</sup> July 2010 and the child has been under their care and control since then. The report indicates that the child has enjoyed the applicants' parental love, care and good nurturing and states that adoption will be in the best interest of the child. The Society has declared the child free for adoption under Section 159 (a) (i) of the Children Act through a certificate dated 17<sup>th</sup> July 2010 No. 616 declaring the child free for adoption.

3. In compliance with the orders of this court issued on 2<sup>nd</sup> July 2019, Beatrice M. Obutu, the County Children Coordinator filed a report on 5<sup>th</sup> August 2019 recommending the adoption of the children by the applicants. The report gives a background of the adoptive parent's marriage, family relationships, educational background, work experience and financial ability. The children officer drew the court's attention to Child Case Number 70 of 2018 which had been filed in the lower court disputing the maternity of the child. The officer recommended the adoption of the child by the applicants subject to the outcome of Child Case Number 70 of 2018, as they have bonded well with the child in the 9 years that he has been under their care.

4. On 6<sup>th</sup> August, 2019, the child, the applicants, the legal guardian, the officers from the Society and the children officer appeared before me. The applicants gave their sworn statements reiterating the averments in their affidavit in support of their application. Whitney Mosongo from KPPI indicated they had presented a report dated 27<sup>th</sup> July 2019 to the court. She stated that the Society recommended the adoption and had declared him free for adoption on 17<sup>th</sup> July 2010.

5. Mercy Maina from the children's office Kisii Central stated that they had also filed a report recommending the child for adoption as it would be in the best interest of the child. She indicated that there had been a dispute concerning the maternity of the child, but the DNA test had turned out negative and there had been no appeal.

6. The applicant's cousin **AMK** agreed to be the child's legal guardian. I also heard the applicant's son **AMM** as his parents had indicated that he had no objection to the adoption.

7. The guardian ad litem **JMO** also appeared before me on 15<sup>th</sup> August 2019. In her sworn statement, she told the court that the applicants had been her neighbours for 15 years. She testified that she saw the applicants on a daily basis and based on her observation the child was doing well.

8. Having considered the application and the affidavits, I find that it is in the best interest of the child that he be adopted by the applicants. The adoption agency has indicated that the child was abandoned and remained unclaimed for more than six months before he was committed to the children home's and subsequently the applicant's care. I perused **Child Case Number 70 of 2017** which had been filed by RMM contesting maternity of the child. A DNA report from the government analyst therein dated 20<sup>th</sup> March 2019 indicates that the said RMM is excluded from being the biological mother to the child. RMM has not pursued the matter further. As the child still remains unclaimed, I dispense with the consent of the biological parents of the child.

9. I allow the applicants to adopt **GB** aka **ABM** who shall be called **ABM** henceforth. **JMO** is discharged as a guardian ad litem and **AMK** is appointed as legal guardian to the child. The Registrar of Birth shall make the appropriate entries of **ABM** in the register. The child shall be presumed to be Kenyan Citizen. It is so ordered.

**Dated, signed and delivered at Kisii this 25<sup>th</sup> day of October, 2019.**

**R.E.OUGO**

**JUDGE**

**In the presence of;**

**Applicants Present**

**Mr. Magara h/b Miss Mogusu For the Applicants**

**Ms. Rael Court Clerk**