



**REPUBLIC OF KENYA**

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

**ADOPTION CAUSE NO. 3 OF 2019**

**IN THE MATTER OF THE CHILDREN ACT 8 OF 2001**

**AND**

**IN THE MATTER OF BABY EM**

**AND**

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

**PN and MWP (APPLICANTS)**

**RULING**

1. The adoption order was sought vide two applications. The first application is brought by way of Ex-parte chamber summons under Section 1A, 1B and 3A of the Civil Procedure Act, Sections 4, 19 and 160(1), (2) and (4) of the Children Act No. 8 of 2001 and all other enabling provisions of the law. It is dated 25.2.2019. The Applicants **PN AND MWP** through their advocates R.M. Mutune and Co. Advocates seek the following orders:

1. ***THAT*** TMK holder of identity card number [xxxx] and resident in the Republic of Kenya be appointed Guardian ad Litem in this cause.
2. ***THAT*** the Director of Children's Department, Ministry of Labour and Social Services do investigate the applicants' fitness to adopt or otherwise and file a report in respect thereof.

2. The second application is brought by way of Ex-parte originating summons under Section 4, 154, 156(1), 157 (1) (a) and 4(a), 159 (4), (6), (7) and (8)(a), 160 (1), (2) and (4), 162, 163, 164(1) and 170 of the Children Act No. 8 of 2001, Section 24 of the Interpretation and General Provisions Act, Chapter 2, Section 9 of the Kenya Citizenship and Immigration Act No. 12 of 2011, the Constitution of Kenya 2010 and all other enabling provisions of the law. It is dated 25.2.2019. The Applicants **PN AND MWP** of Applicants seek the following orders:-

1. ***THAT*** the Applicants **PN AND MWP** be authorized to adopt the child currently identified and known as **BABY EM**.
2. ***THAT*** the child be renamed as **MKP**.
3. ***THAT*** the child be presumed to be a Kenyan Citizen and as a consequence be entitled to the rights and benefits of a Kenyan Citizen, including being issued with a Kenyan passport whenever desired.
4. ***THAT*** the Registrar General makes the appropriate entries in the Adopted Children Register
5. ***THAT*** **JMM AND EWM** be deemed to be the appointed Legal Guardians in respect of the child.
6. ***THAT*** the court do issue such further orders as are in the interest of justice.

3. Vide amended ex parte chamber summons dated 22.5.2019, it was sought that **RMK resident of Eastleigh in Machakos town in the Republic of Kenya be appointed Guardian ad Litem in this cause.**

4. In the preliminary stage, the first application as amended was allowed by the court.

5. According to a report filed in court on 23.5.2019 by Kenya Children Homes, the Applicants **PN AND MWP** were married on 7<sup>th</sup> August,

1999. The report indicated that the minor was presumably born on 24<sup>th</sup> April, 2012 and was found abandoned at [Particulars Withheld] area, rescued and taken to Nakuru Provincial General Hospital. The report indicated that the case was reported and recorded at Nakuru Police station vide Occurrence Book No. [xxxx]. It also indicated that the minor was released to the custody of Holy Family Children Home for care and protection on 31<sup>st</sup> May, 2012 then committed to the Holy Family Children Home for care and protection at the Nakuru Children court on 31<sup>st</sup> March 2016 vide protection and care case No. 161 of 2016 for 3 years. The report indicated that the Nakuru police station confirmed that no one claimed the child and he was freed for adoption by the Kenya Children Homes Adoption Society's case committee on its sitting of 18<sup>th</sup> July, 2018 and a freeing certificate serial No [xxxx] issued.

6. According to the applicants' affidavit dated 2.2 2019, they had never been convicted of a criminal offence as per the attached police clearance form. They sought to adopt the minor whom they have fostered since 2<sup>nd</sup> December, 2018 and have not received any form of payment in consideration for the adoption. They stated that they are ready to care for the baby and that their only daughter CWP has no objection to the adoption as she duly signed a consent to that effect.

7. **JMM and EWM** swore an affidavit dated 11.2.2019 to confirm consent to act as Legal Guardians of the minor.

8. On 22.5.2019 this court directed the Director of Children Services to conduct investigations as to the suitability of the Applicants to adopt **EM-MINOR** and submit a report and findings to court.

9. Beatrice N. Nyachieo is the Sub-County Children's Officer, Kangundo. She conducted a social inquiry on the Applicants by interrogating them and visiting them at their home on 27.6.2019. It was observed that the applicants have one daughter CWP. The minor seemed to have bonded well with the applicants and their daughter and her conclusion is that the applicants have demonstrated ability to maintain EM-MINOR. The said Sub-County Children's Officer filed a favourable report dated 12.7.2019 as to the suitability of the Applicants to adopt EM-MINOR. **RMK** the guardian ad litem appeared before me on 16.7.2019 to seek that her report dated 16.7.2019 confirming the suitability of the applicant to be adopted in the instant proceedings.

10. On 26.9.19, Pauline Kitema a manager from Kenya Children Homes appeared in court to recommend the applicants' application and to confirm the suitability of the applicants to adopt the minor as well as adopt the report dated 15.4.19 and filed on 23.5.19 to be adopted. **JMM and EWM** appeared before me on 16.7.2019 to confirm and rely on the contents of their affidavits and willingness to take up their duties as legal guardians as well as recommend the applicant to adopt EM-MINOR. They appeared to be conversant with obligations of being legal guardians and are aware that the role is irrevocable for the entire lifetime of the minor. The applicants also appeared before me on the same day and relied on their affidavits to support the application and indicated willingness to adopt and cater for the needs of the minor.

11. This court is satisfied that the Applicants are suitable persons to adopt EM-MINOR and that they are financially stable and have the means to provide and care for him. I also find that it is in the best interests of the child to allow the application.

For the above reasons, the court orders as follows;

1. **THAT the Applicants be and are hereby authorized to adopt EM-MINOR and the baby be known as MKP.**
2. **THAT JMM AND EWM be and are hereby appointed Legal Guardians of the minor.**
3. **THAT the Registrar-General do make in the Adopted Children Register an entry recording the adoption in accordance with the particulars set out in the Schedule to this order.**
4. **THAT the Guardian ad Litem is hereby discharged.**

**It is so ordered.**

**Dated and delivered at Machakos this 28<sup>th</sup> day of November, 2019.**

**D. K. Kemei**

**Judge**