



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MACHAKOS**  
**ADOPTION CAUSE NO. 6 OF 2019**  
**IN THE MATTER OF THE CHILDREN ACT 8 OF 2001**  
**AND**  
**IN THE MATTER OF BABY EZ**  
**AND**  
**IN THE MATTER OF AN APPLICATION FOR ADOPTION BY CMM (APPLICANT)**  
**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 28<sup>th</sup> March, 2019. The Applicant **CMM** through her advocates R.M. Mutune and Co Advocates seek the following orders:

1. **THAT** FNN holder of identity card number [xxxx]and resident in [Particulars Withheld] Estate within Machakos County 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, Machakos sub-county Children's Officer do investigate the applicant's 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 28<sup>th</sup> March, 2019. The Applicant **CMM** of Address [xxxx]-90100 Machakos through her advocates R.M. Mutune and Co Advocates seeks the following orders:

1. **THAT** the Applicant CMM be authorized to adopt the child currently identified and known as BABY EZ.
2. **THAT** the child be renamed as DM.
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** FMM be deemed to be the appointed Legal Guardian in respect of the child.
6. **THAT** the court do issue such further orders as are in the interest of justice.

3. In the preliminary stage, the first application was allowed by the court.

4. According to a report dated 16<sup>th</sup> April, 2019 filed in court by Kenya Children Homes, the Applicant **CMM** is a single Kenyan citizen who was approved to be a suitable adoptive parent by the Society's case committee and was placed with the minor from 13<sup>th</sup> October, 2018. The

report indicated that the minor was born on 11<sup>th</sup> September, 2015 via entry [xxxx] and his mother CAA conceived with her paternal uncle and was at risk of being slain because she had a taboo pregnancy and as a result the minor was handed over to the Kenya Children Homes Adoption Society for safe custody. The report indicated that the Minor was committed to Mumias Kids Centre for care and protection at the Mumias Children Court on 28<sup>th</sup> October, 2015 vide protection and care case 55 of 2015. It also indicated that CA and HAA (her maternal aunt) gave consent to the adoption.

5. According to the applicant's affidavit dated 28<sup>th</sup> March, 2019, she had never been convicted of a criminal offence and attached police clearance certificate. She seeks to adopt the minor as she was issued with a certificate freeing the minor for adoption vide serial No. [xxxx] issued on 21<sup>st</sup> February, 2018 and has fostered the child since 13.10.2018. She also avers that she has not received any form of payment in consideration for the adoption. She stated that FMM accepted to be the legal guardian of the minor.

6. **FMM** swore an affidavit dated 27<sup>th</sup> March, 2019 to confirm consent to act as Legal Guardians while **CAA** vide affidavit dated 27<sup>th</sup> August, 2017 together with HAA gave consent giving up the minor for adoption.

7. On 21<sup>st</sup> February, 2018, the applicant was found to be a suitable adoptive parent and EZ-MINOR was declared free for adoption by the Kenya Children Homes Adoption Society Case committee vide certificate number [xxxx] issued on the same day.

8. On 16<sup>th</sup> July, 2019 this court directed the Director of Children Services to conduct investigations as to the suitability of the Applicant to adopt **EZ-MINOR** and submit a report and findings to court.

9. Emily Kimanzi is the Sub-County Children's Officer, Machakos. She conducted a social inquiry on the Applicant by interrogating her on an unknown date. It was observed that the applicant is a widow who lost her two children and who lives in a one bedroom house and has a second hand clothes business. The applicant felt lonely and having picked the pieces after the demise of her children she is willing to take on the responsibility of taking care of the minor. She concluded that the applicant has demonstrated ability to maintain EZ-MINOR. She filed a favourable report dated 13.8.2019 as to the suitability of the Applicant to adopt EZ-MINOR. She appeared before me on 25.9.2019 to seek that her report where she recommended applicants' application and in respect of a home visit that she undertook confirming the suitability of the applicant to be adopted in the instant proceedings.

10. On 25.9.2019, PNN appeared in court to recommend the applicants' application and to confirm the suitability of the applicant to adopt the minor as well as adopt the report dated 16.4.2019. **FMM appeared** before me on 25.9.2019 to confirm and rely on the contents of her affidavit and willingness to take up duties as a legal guardian of the minor as well as recommend the applicant to adopt EZ-MINOR. The said legal guardian appeared to be fully conversant with her and further is aware that the said role is irrevocable. The applicant also appeared before me on the same day and relied on her affidavits in support the application and indicated willingness to adopt and cater for the needs of the minor.

11. This court is satisfied that the Applicant is a suitable person to adopt EZ-MINOR and that she is financially stable and has 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 since her biological parents have cast him away as a taboo child born out of an incestuous relationship. The baby's only chance of survival seems to rest with the applicant with whom he has bonded well.

12. For the above reasons, the application is allowed with the following orders;

1. **THAT the Applicant be and is hereby authorized to adopt EZ-MINOR and the baby be known as DM.**
2. **THAT FMM be and is hereby appointed Legal Guardian 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 27<sup>th</sup> day of November, 2019.**

**D. K. KEMEI**

**JUDGE**