



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS

ADOPTION CAUSE NO 1 OF 2017

AND

IN THE MATTER OF THE CHILDREN ACT

AND

IN THE MATTER OF BABY E M

K M.....1ST APPLICANT

F M M2ND APPLICANT

RULING

1. By an Originating Summons dated 24th January, 2017 the Applicants herein **K M** and **F M M** sought for an order to adopt baby **E M** whom they sought to rename him as **E M** The Applicants duly complied with the provisions of Section 158 and 159 of the Children's Act 2001.

2. The Applicants in compliance with the provisions of the children Act 2001 duly secured one **G K M** who agreed to be appointed as Guardian Ad Litem and they further secured one **E K M** to be appointed as the legal guardian of the child sought to be adopted.

3. The Applicants herein are Kenyan adult citizens who have been married to each other since 1999 under Kamba customary rites and on 1st October, 2013 solemnized their marriage at the Registrar's Office Machakos under the Civil Marriage and Divorce Act. They are residents within Machakos County in the Republic of Kenya and in their originating summons they had sought for the following prayers:-

(i) That the requirements of section 158(4) (a) of the children's Act be waived as provided for Section 159(1) of the Act.

(ii) That G K M in the said Republic be appointed as Guardian ad litem in this case.

(iii) That the Director of Children's Department office of the Deputy president & Ministry of Home Affairs investigates the Applicants fitness to adopt and investigate the case and file a report.

(iv) That the Applicants be authorized to adopt BABY E M to be known as E M and the particulars be entered in the adopted children's Register accordingly.

(v) That the court be pleased to make any further orders it deems necessary.

4. Prayer (i) of the said Originating Summons was granted during the hearing held on 2/05/2017, after an examination by the Court of the guardian *ad litem*, as was prayer (ii). The Court during several hearings held on 3rd October, 2017 and 2nd November, 2017 admitted as evidence a declaration report by Kenya Children's Homes Adoption Society Report dated 7th August, 2015 and filed in court on 6th April, 2017. The report by Judy Wachira the District Children's Officer Dagoretti dated 7th February, 2014 was also adopted by the Court as evidence during the said hearings. The proposed guardian *ad litem* and legal guardian also filed affidavits in Court giving their consent to their respective appointments.

5. Baby E M is male child who was found abandoned within Dagoretti market on 24/12/2013 by a Good Samaritan one Teresia Wangechi and the abandonment was reported to Dagoretti Police Post where it was recorded vide Occurrence Book Number 21/24/2013. The infant was subsequently placed under the care and protection of Abandoned Baby Center at Dagoretti Children's Centre and a court order formalizing his committal to the said children's home was issued on 19/03/2014 by the Senior Resident Magistrate at the Nairobi Children's Court vide Protection and Care Number [particulars withheld] for a period of 3 years. The Dagoretti Police Post confirmed in a letter dated 18/03/2015 that their efforts to trace the parents of the child had been futile.

6. The Applicants approached the Kenya Children's Home Adoption Society on 15/4/2015 for ratification for placement with a child with a view to eventual adoption. The Applicants were approved to be suitable adoptive parents and placed with Baby E M on 15/04/2015.

7. The reports filed in Court confirm that the Applicants are mature and responsible, and have bonded well with Baby E M, and all of them recommend the adoption. Having evaluated the facts of this adoption application, I note that it is seeking a local adoption and that the Applicants are joint married applicants who are at least 25 years of age and under the age of 65 years, and who wish to adopt a male child. They have therefore met the requirement set under Section 158 (1), (2) and (3) of the Children Act.

8. This court is also satisfied that the Applicants are qualified and able to take care of the child. The home visits by the guardian *ad litem*, the Adoption Society and the Children Officer established that the Applicants have the financial capability to provide for the upkeep and education of the child. The reports filed in Court pursuant to these visits also do recommend the Applicants' adoption of Baby E M. Lastly, I observed the Applicants with Baby Emmanuel Mshindi in court, and it was evident that they had bonded well and that the said child is well taken care of.

9. This Court therefore forms the opinion that it would be in the best interest of Baby E M to be adopted by the Applicants. Consequently, the Applicants shall assume all parental rights and duties of the biological parents in respect of the adopted child, and shall treat the adopted child as if he was born to them. The Applicants have also been made aware that once the adoption order is made it shall be final and binding during the lifetime of the child, and that the child shall have the right to maintenance and to inherit their property. The adoption order once made is absolute and irreversible, and the Applicants cannot give up the child owing to any subsequent unforeseen condition or other changes in the child.

10. I accordingly allow the application for adoption and order as

follows:

1. The Applicants, K M and F M M are hereby allowed to adopt Baby E M.

2. The child shall henceforth be known as E M.

3. E K M shall be the legal guardian of the child should such eventuality arise.

4. As the child was found abandoned in Kenya, he is hereby declared a Kenyan citizen by birth.

5. The Registrar-General is directed to enter this adoption order in the adoption register.

6. I hereby forthwith discharge the guardian ad litem.

It is so ordered.

Dated, signed and delivered at Machakos this 19th day of **January, 2018.**

D.K. KEMEI

JUDGE

In the presence of:-

N/A for Gichuki for the Applicants

Kituva - Court Clerk