



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

**ADOPTION CAUSE NO 16 OF 2011**

**AND**

**IN THE MATTER OF THE CHILDREN ACT**

**AND**

**IN THE MATTER OF BABY G**

**T M K .....1<sup>ST</sup> APPLICANT**

**G M M .....2<sup>ND</sup> APPLICANT**

**JUDGEMENT**

1. By an Originating Summons dated 10/11/2011 the Applicants herein **T M K** and **G M M** sought for an order to adopt baby **G** whom they sought to rename her as **E N 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 **P M N** who agreed to be appointed as Guardian Ad Litem and they further secured one **C M 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 April 1992 under the African Christian Marriage and Divorce Act. They are residents of Kangundo 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 P M N in the said Republic be appointed Guardian ad litem in this case.***

***(iii) That C M M in the said Republic be appointed the Legal Guardian of the said child.***

***(iv) That the Applicants be authorized to adopt baby G and the baby be known as E N M.***

***(v) That the Director of Children's Department do investigate the case and file a report.***

***(vi) AND IT IS DIRECTED that the Registrar General shall make in the adopted Children register an entry recording the adopting in accordance with particulars set out in the schedule***

***attached hereto.***

4. Prayer (i) of the said Originating Summons was granted during the hearing held on 15<sup>th</sup> October, 2012, after an examination by the Court of the guardian *ad litem*, as was prayer (ii). The Court during several hearings held on 15/10/2012, 14/05/2013 and 5/4/2017 admitted as evidence a declaration report by Kenya Children's Homes Adoption Society Report dated 12<sup>th</sup> March, 2012 and filed in court on 15<sup>th</sup> March, 2012. The guardian *ad litem*'s report dated 13<sup>th</sup> May, 2013 and filed in Court on 14<sup>th</sup> May, 2013 and the report by Damaris Kasyula the Sub- County Children's Officer Kangundo Children's Office dated 29<sup>th</sup> August, 2013 and filed in Court on 18<sup>th</sup> July, 2017 were 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 G is a female child who was found abandoned within Shauri Moyo area on 6<sup>th</sup> July, 2007 by good Samaritan and the abandonment was reported to Shauri Moyo Police station where it was recorded vide Occurrence book Number [particulars withheld]. The infant was subsequently placed under the care and protection of Missionaries of Charity – Huruma and a court order formalizing her committal to the said children's home was issued on 31<sup>st</sup> October, 2007 by the Senior Resident Magistrate at the Nairobi Children's Court. The Shauri Moyo Police station confirmed in a letter dated 17<sup>th</sup> January, 2008 that their efforts to trace the parents of the child had been futile.

6. The Applicants approached the Kenya Children's Home Adoption Society in June 2008 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 G on 9<sup>th</sup> December 2008.

7. The reports filed in Court confirm that the Applicants are mature and responsible, and have bonded well with Baby G, 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 G. Lastly, I observed the Applicants with Baby G 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 G 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 she 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, T M K and G M M are hereby allowed to adopt Baby G.***

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

***3. C M M shall be the legal guardian of the child should such eventuality arise.***

***4. As the child was found abandoned in Kenya, she 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 in open court at Machakos this **16<sup>th</sup>** day of **January, 2018**.

**D.K. KEMEI**

**JUDGE**

In the presence of:-

Muia for the Applicants

Kituva: Court Clerk