



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

ADOPTION CAUSE NO 10 OF 2011

AND

IN THE MATTER OF THE CHILDREN ACT

AND

IN THE MATTER OF BABY D E

F M I.....1ST APPLICANT

P M M.....2ND APPLICANT

RULING OF THE COURT

1. By an Originating Summons dated 23/07/2009 the Applicants herein **F M I** and **P M M** sought for an order to adopt baby **D E** whom they sought to rename him as **K 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 **D K K** who agreed to be appointed as Guardian Ad Litem and they further secured one **J K K** 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 1977 under the Kamba customary laws. They are residents of Makueni County in the Republic of Kenya and in their originating summons they had sought for the following prayers:-

*(i) That **D K K** of P. O. Box *****- 00200 Nairobi in the in Republic of Kenya be appointed Guardian ad litem in this case.*

*(ii) That the Director-Children's Department, be directed to compile the requisite report on the Applicants fitness to adopt the child **D E**, under the Children Act, 2001.*

*(iii) That the Applicants be authorized to adopt **D E** to be known as **K M**.*

*(iv) **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 1/11/2017 after an examination by the Court of the guardian *ad litem*, as was prayer (ii). The Court during the further hearing on 1/3/2018 admitted as evidence a declaration report by Child Welfare Society of Kenya Report dated 27/07/2007 and filed in court on 1st November, 2017, the report prepared by Erasto Omollo the Makueni District Children Officer dated 29th May, 2012 and filed in court on 1/11/2017 together with affidavit in support of the Guardian Ad litem and legal guardian were adopted by the Court as evidence during the said hearing.

5. **Baby D E** is a male child who was born in February, 2004. He was orphaned by the death of his mother. The biological mother died soon after giving birth to him and was left under the care of his grandmother R Owho was also ailing. The minor was referred to the Children Officer and she referred the child under care of Seeds in His Garden children's Home on 28/02/2004.

6. The minor remained in the children's Home until January, 2005 when he was placed under foster care of Mr. and Mrs F M I. The grandmother to the minor later on passed away in March, 2004 and there have been no sufficient information that can be used to trace any relatives.

7. The reports filed in Court confirm that the Applicants are mature and responsible, and have bonded well with **Baby D E** 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 jointly 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 D E**. Lastly, I observed the Applicants with **Baby D E** 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 D E** 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:

*(i) That the Applicants are hereby authorized to adopt **BABY D E** who shall be known as **K M**.*

*(ii) That **J K K** shall be the Legal Guardian of the said child should such eventuality arise.*

(iii) That the Registrar General is directed to enter this adoption order in the adoption register.

(iv) The Guardian Ad litem is hereby discharged.

It is so ordered.

Dated, signed and delivered at Machakos this 9th day of March, 2018.

D.K. KEMEI

JUDGE

In the presence of:-

Nzilani Muteti - for the Applicants

Kituva - Court Clerk