



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

ADOPTION CAUSE NO 7'B' of 2017

AND

IN THE MATTER OF THE CHILDREN ACT

AND

IN THE MATTER OF BABY O R. M N

A N N1ST APPLICANT

J N N2ND APPLICANT

RULING OF THE COURT

1. By an Originating Summons dated 19th March, 2017 the Applicants herein **A N N** and **J N N** sought for an order to adopt baby **O R. M N** whom they sought to rename her as **O R. M N**. 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 W J** who agreed to be appointed as the guardian ad litem of the child sought to be adopted.

3. The Applicants herein are Kenyan adult citizens who got marriage through a church wedding at A.I.C Machakos on 2nd May 1987.

They are residents of Machakos Town 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) of the Children's Act be waived as provided for by Section 159(1) of the Act.

*ii. That **D W J** in the said Republic be appointed Guardian ad litem in this case.*

*iii. That the Applicants be authorized to adopt baby **O R. M N** and the baby be known as **O R. M N**.*

*iv. THAT **F M K** be appointed the legal guardian of the child.*

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's register an entry recording the adoption in accordance with the particulars set out in the schedule attached hereto.*

4. Prayer (i) of the said Originating Summons was granted during the hearing held on 30/10/2017 after an examination by the Court of the guardian *ad litem*, as was prayer (ii). The Court during the further hearings on 28/02/2018 and 12/04/2018 admitted as evidence a declaration report by Buckner Kenya Adoption Services Report dated 10/04/2018 and filed in court on 11/04/2018 was adopted by the Court as evidence during the said hearing.

5. **O R. M N** is a female child presumably born on 12th March, 2000. She was found abandoned at Kenyatta National Hospital after birth. She was placed with Mr. **A N N** and Mrs **J N N** by the children's Department of Nairobi province for foster care. The child was one month old at the time she was fostered and she was named by her foster parents. The applicants have taken good care of the child since she was one month to date. There are no documents available for the baby neither from Kenyatta nor from the Children's Department regarding the

baby's history. A case Committee of Buckler Kenya Adoption Services (BKAS) as prescribed by Regulations 16 of the Adoption Regulations 2005 deliberated on this matter in a meeting held on 22nd February, 2017 and they were satisfied that the child in this matter, **O R. M N** is available for adoption and further that the adoption would be in the child's best interest.

6. The reports filed in Court confirm that the Applicants are mature and responsible, and have bonded well with **O R. M N** 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 female child. They have therefore met the requirement set under Section 158 (1), (2) and (3) of the Children Act.

7. 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 **O R. M N** Lastly, I observed the Applicants with **O R. M N** in court, and it was evident that they had bonded well and that the said child is well taken care of.

8. This Court therefore forms the opinion that it would be in the best interest of **O R. M N** 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.

9. I accordingly allow the application for adoption and order as follows:

- 1. That the Applicants be authorized to adopt baby **O R. M N** and the baby be known as **O R. M N**.*
- 2. THAT **F M K** shall be the legal guardian of the child should such eventuality arise.*
- 3. THAT as the child was born in Kenya she be considered as a Kenyan citizen by birth.*
- 4. THAT the Registrar General is directed to enter this adoption order in the adoption register.*
- 5. THAT the Guardian Ad litem is hereby discharged.*

It is so ordered.

Dated, signed and delivered at Machakos this 13th day of April, 2018.

D.K. KEMEI

JUDGE

In the presence of:-

Langanga for Mrs Mutua for the Applicants

Kituva - Court Assistant