



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MACHAKOS**

**ADOPTION CAUSE NO 12 OF 2015**

**AND**

**IN THE MATTER OF THE CHILDREN ACT**

**AND**

**IN THE MATTER OF BABY A B**

**C N N.....1<sup>ST</sup> APPLICANT**

**J M N.....2<sup>ND</sup> APPLICANT**

**RULING OF THE COURT**

1. By an Originating Summons (Amended) dated 26<sup>th</sup> day of October, 2016 the Applicants herein **CNN** and **JNN** sought for an order to adopt baby **SAB** whom they sought to rename him as **ABN**. 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 **CNM** who agreed to be appointed as the legal guardian of the child sought to be adopted.

3. The Applicants herein are Kenyan adult citizens who got marriage on 8<sup>th</sup> September, 1990 through a church ceremony.

They are residents of [Particulars Withheld] in 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 **JMN** in the said Republic be appointed Guardian ad litem in this case.*

*(iii) That the Applicants be authorized to adopt baby **AB** and the baby be known as **ABN**.*

*(iv) THAT **CNM** 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 4/4/2016 after an examination by the Court of the guardian *ad litem*, as was prayer (ii). The Court during the further hearings on 30/10/2017, 15/1/2018 and 12/04/2018 admitted as evidence a declaration report by Child Welfare Society of Kenya Report dated 18<sup>th</sup> June, 2015 and filed in court on 6<sup>th</sup> July, 2015, the report by Nathan M. Kyule Yatta Sub - County Children's Officer dated 21/10/2016 and filed in court on 27<sup>th</sup> October, 2016 were adopted by the Court as evidence during the said hearing.

5. **Baby AB** is a male child presumably born on 13<sup>th</sup> May, 2011. He was found abandoned on 12<sup>th</sup> May, 2013 at the compound of one Jecinta Njoki Ngugi at the outskirts of Molo Town within Nakuru County. She rescued the child and reported the matter at Molo Police station. The matter was also reported at the Children's Office of Molo and he was later referred to a charitable Children's institution for care and management. **Baby AB** was later admitted at Africa Gospel Church Baby Centre – Nakuru as a child in need of care and protection at the Children's Court of Molo on 13<sup>th</sup> May, 2013 vide **Protection and Care Case Number 3 of 2013** for a period of three years. The child was thus freed for adoption by the Kenya Children's Homes Adoption Society's Case Committee on its sitting of 13<sup>th</sup> August, 2014 and a freeing certificate Serial No. [Particulars Withheld] issued pursuant to Section 156(1) of the Children's Act 2001.

6. The reports filed in Court confirm that the Applicants are mature and responsible, and have bonded well with **Baby AB** 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 **Baby AB**. Lastly, I observed the Applicants with **Baby AB** 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 **Baby AB** 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.

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

follows:

1. *That the Applicants be authorized to adopt baby **AB** and the baby be known as **ABN**.*
2. *THAT **CNM** shall be the legal guardian of the child should such eventuality arise.*
3. *THAT as the child was born in Kenya he 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 13<sup>th</sup> day of April, 2018.**

**D.K. KEMEI**

**JUDGE**

**In the presence of:-**

Langalanga for Mrs Mutua for the Applicants

Kituva - Court Assistant