



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

ADOPTION CAUSE NO 9 OF 2017

AND

IN THE MATTER OF THE CHILDREN'S ACT

AND

IN THE MATTER OF BABY R

IN THE MATTER OF AN APPLICATION FOR AN ADOPTION ORDER BY

JMM)

FNM).....APPLICANTS

RULING

1. By an Originating Summons dated 5th June, 2017 filed in court on 19th June, 2017 the Applicants herein **JMM** and **F N M** sought for an order to adopt baby **R** whom they sought to rename him as **RKM**. The Applicants duly complied with the provisions of Section 158 and 159 of the Children's Act 2001.

2. The Applicant in compliance with the provisions of the children Act 2001 duly secured one **JKK** who agreed to be appointed as Guardian Ad Litem of the child sought to be adopted.

3. The Applicants herein are Kenyan adult citizen. They are residents of Ngeleni in Machakos County in the Republic of Kenya and in their Chamber Summons they had sought for the following prayers:-

*(1) THAT **JKK** of C/o Post Office Number [particulars withheld] Machakos in the Republic of Kenya be appointed guardian ad litem.*

(2) THAT the Director of Children's Department Ministry East African Community, Labour and Social Protection investigates the Applicant's fitness to adopt and files a report.

*(3) THAT **JKK** be appointed legal guardian of the child.*

*(4) THAT the Applicants **JMM** and **FNM** be authorized to adopt the child **R** and to be known as **RKM**.*

(5) THAT the Registrar General be ordered to enter the Child's name in the adoption register.

*(6) THAT the **CHILD** be considered a Kenyan Citizen.*

(7) 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 26/2/2018, after an examination by the Court of the guardian ad litem, as was prayer (ii). The Court during further hearings held on 12/4/2018 and 8/5/2018 admitted as evidence a declaration

report by Kenya Children's Home Adoption Society Report dated 11th July, 2017 and filed in court on 8th May, 2018. The report by Josephine W. Hinga the Sub- County Children's Officer Kathiani dated 12th April, 2018 and filed in court on the same date and the guardian *ad litem's* affidavit sworn on 5/06/2017 filed in court on 14th June, 2017 were also adopted by the Court as evidence during the hearings.

5. **Baby R** is a male child, presumed to have been born on 28th March, 2016. He was born at home in Mukuru Kwa Njenga but later on the same day was taken to Kenyatta Nation Hospital where he was admitted together with his mother. Three days later the mother abandoned the baby in the same hospital. The matter was reported at the Kenyatta police post on 12th July, 2006 where it was recorded vide Occurrence Book Number [particulars withheld] 2006. Later on the Provincial Children Office Nairobi sought a vacancy for the minor at Thomas Barnado House and the same was availed on 4th January, 2007 and the minor was admitted as an abandoned child. The child was later committed to the care and protection of the said home on 25th July, 2007 at the Nairobi Children's Court by the Senior Resident Magistrate vide Protection Case No. 118 of 2007. Six months later, the Provincial Children Office and Kenyatta police post asserted that the search for the child's kin had not borne fruit and issued clearance letters dated 6th June, 2008 and 22nd November, 2010 respectively asking the home to proceed with any legal care arrangements in the child's best interest and the child was thus freed for adoption by the Kenya children's Homes Adoption Society's Case Committee on its sitting of 8th March, 2011. The Applicants were introduced to the said child on 11th July, 2011 and successfully bonded with the child before being placed with him on 15th July, 2011.

6. The Applicants approached the Adoption Society with an intention of being ratified for placement with a child for purposes of adopting a baby boy and they were placed with **baby R** on 4th May, 2011.

7. The reports filed in Court confirm that the Applicants are mature and responsible, and have bonded well with **Baby R** 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 at least 25 years of age and under the age of 65 years, and who wishes 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 R**. Lastly, I observed the Applicants with **Baby R** 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 R** 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) THAT the Applicants **JMM** and **FNM** be and are hereby authorized to adopt the child **R** and the child to be known as **RKM**.*

*(2) THAT **JKK** shall be the legal guardian of the child should such eventuality arises.*

(3) THAT as the child was born in Kenya, he is hereby declared a Kenyan citizen by birth.

(4) THAT the Registrar General is directed to enter this adoption order in the Children's Adoption register.

(5) THAT the Guardian Ad litem is hereby discharged.

It is so ordered.

Dated, signed and delivered at Machakos this 18TH day of MAY 2018.

D.K. KEMEI

JUDGE

In the presence of:-

N/A for Kalinga- for the Applicants

Steve - Court Assistant