



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**(FAMILY DIVISION)**

**ADOPTION CAUSE NO. 111 OF 2016**

**IN THE MATTER OF AN APPLICATION FOR ADOPTION OF BABY W F**

**RULING**

1. I delivered a ruling herein on 30<sup>th</sup> June 2017 wherein I raised issue with the various names appearing in the documents placed before me allegedly referring to the child in question. In purported response to the said ruling, an affidavit was lodged herein on 30<sup>th</sup> August 2017, sworn on 7<sup>th</sup> August 2017 by a director of the institution from which the child was placed with the applicants. The deponent endeavours to explain the policy of the institution regarding the names of the children they receive there from the police and elsewhere.

2. The issue never was the policy. The court appreciates that children found abandoned would be given names by the police for identification purposes and the institutions to which they are subsequently placed could change the names given by the police and give the children other names. That is not the issue raised in my ruling of 30<sup>th</sup> June 2017. It is not about what names were given to the child, by who and when.

3. It is about the pleadings. The orders that the court will ultimately make will be founded on the pleadings, and therefore the documents that are meant to support the pleadings must tally with the pleadings. As matters stand those documents are not in sync with the pleadings. There should be no doubt from the pleadings that the child referred to in the pleadings and the child referred to in the supporting documents refer to one and the same person. So that where the pleadings do not refer to W M, yet the documents the court is invited to rely on do mention W M, the court is not left wondering who this W Mis, and how he is related to W F.

4. The purported explanation by the deponent of the affidavit sworn on 7<sup>th</sup> August 2017 does not address the issue. It still harps on W yet some of the documents relied on refer to W. There is nothing to show that the two names refer to the same person. The question remains whether the child we are dealing with her is W or W.

5. For human beings identity is everything. The name given to a human being is what identifies him, hence the need not to have multiple identities, and where such multiple identities exist then there is need to establish that all refer to the one and same person.

6. What the applicants should have done, instead of filing further affidavits, is to amend their pleadings so as bring all the names assigned to the subject child, from the time he was rescued by the police to the time that he was presented in court, into the pleadings. The said child is identified by all those names assigned to him, since the documents placed before the court refer to him as such. The pleadings must therefore conform to those documents. The chain from the time he was found abandoned up to the time the court allows the adoption and assigns him a new name must not be broken, and must be discernible from the pleadings.

7. For the reasons given above, I am unable to grant the orders sought in the Originating Summons dated 2<sup>nd</sup> September 2016.

**DATED, SIGNED and DELIVERED at NAIROBI this 14<sup>TH</sup> DAY OF JUNE, 2018.**

**W. MUSYOKA**

**JUDGE**