



**REPUBLIC OF KENYA**

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

**ADOPTION CAUSE NO. 123 OF 2017 (O.S)**

**IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001**

**IN THE MATTER OF ADOPTION OF BABY KB**

**BY**

**DIO AND MNM (APPLICANTS)**

**JUDGMENT**

1. The Applicants DIO and MNM are in a monogamous marriage. They got married on 23<sup>rd</sup> January, 2011 under customary law and solemnized it on 10<sup>th</sup> July, 2015. They have no children of their own.
2. They wish to adopt the child known as Baby KB, through the Originating Summons dated 5<sup>th</sup> August, 2017. From the pleadings the court gathers that DIO is a part-time lecturer at [particulars withheld], while MNM is a housewife. They reside in Machakos County and both profess the Christian faith.
3. Records indicate that the minor in this matter was born on 12<sup>th</sup> May, 2015 from an unfortunate incident of incest between the biological mother and her cousin. The biological mother opted to carry the pregnancy to term and later give up the child for adoption since the baby was a product of incest which is a taboo in Luhya Tradition.
4. On 11<sup>th</sup> November, 2015 the biological mother and father signed an agreement stating that they would not claim the child. On 14<sup>th</sup> May, 2015 the child was committed to Springs of Life Children's Home by the Kakamega Children's Court vide P&C Case No. 285 of 2015. The child was later committed to Thomas Barnardo's Children Home on 2<sup>nd</sup> November, 2015 due to lack of space at Springs of Life Children's Home.
5. Prior to the hearing of the adoption application, Kenya Children's Home Adoption Society prepared and filed a report in court. They also issued a certificate No. [particulars withheld] dated 5<sup>th</sup> October, 2016 declaring the child free for adoption. The guardian ad litem M M M filed a report which was favourable and recommended the adoption of the child by the Applicants.
6. An officer in the office of The Director of Children Services made home visits and established that the Applicants are financially and emotionally capable of providing for the up keep and education of the child. She filed a report dated 1<sup>st</sup> March, 2018 recommending the adoption for reasons that the child stands to gain from the opportunities provided by becoming the son of the Applicants as opposed to living all his life in an institution as an abandoned child.
7. The child was in court during the hearing and appeared to have bonded well with the Applicants. He was calm and clearly seemed to trust the Applicants and regard them as his parents. The Applicants' family members are said to be aware of the proposed adoption and support it.
8. It is important to note that, the orders sought by the Applicants relate to a child. Any matter concerning a child and the best interests of a child are of paramount importance as provided for under **Article 53(2)** of the **Constitution** and **Section 4(3)** of the **Children Act No. 8 of 2001**, which provides the guiding principle on this question as follows:

***“All judicial and administrative institutions, and all persons acting in the name of these institutions, where they are exercising any powers conferred by this Act shall treat the interests of the child as the first and paramount consideration...”***

9. I note that this is a local adoption and the Applicants, in my opinion have fulfilled the requirements for local adoption under the Children Act, 2001. They have proved during the placement period prior to adoption that they are capable of taking on the challenge of raising the child in this matter. Secondly, the Applicants meet the social parameters that are considered relevant to their taking on parental responsibility and custody of the child in this matter, on a permanent basis as would be conferred by the adoption order sought.

**10.** From the foregoing, this court has formed the opinion that it is in the best interest of the child to be adopted by the Applicants. Reasons wherefore, I allow the prayers sought in the Originating Summons dated 5<sup>th</sup> August, 2017 and order as follows:

- i. The Applicants, DIO and MNM are hereby allowed to adopt **Baby KB** who shall henceforth be known as **CDSO**
- ii. His date of birth shall be presumed to be 12<sup>th</sup> May, 2015. He is presumed to have been born in Kenya in accordance with **Article 14(1)** of the **Constitution**, and the place of birth shall be Kakamega County.
- iii. TMM (brother to the female Applicant), is hereby appointed legal guardian of the child in the event that the Applicants die, or are incapacitated by ill-health.
- iv. The Registrar General is directed to enter this order in the Adoption Register.
- v. The Director of Immigration is hereby authorised to issue the child with a Kenyan passport.
- vi. The guardian ad litem is hereby discharged.

It is so ordered.

**SIGNED DATED** and **DELIVERED** in open court this **31<sup>st</sup>** day of **July 2018**

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**L.A ACHODE**

**JUDGE**