



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ADOPTION CAUSE NO.17 OF 2015
IN THE MATTER OF THE CHILDREN ACT NUMBER 8 OF 2001
AND
IN THE MATTER OF AN ADOPTION OF D M (A CHILD)
BY
S M K & J M MAPPLICANTS

JUDGMENT

1. The applicants **S M K** and **J M M** are seeking to be authorized to adopt the child **D M**. They also seek that upon making the adoption the child be called **D K**. They also seek that their **E M K** (a sister to the 1st applicant) be appointed the legal Guardian of the child.

2. **S M K** and **J M M** are 41 and 38 years respectively. The applicants got married in 1997 under Kamba Customary Law and have one biological child. The applicants are self-employed. They are of sound mind and have not been charged or convicted with any offence set out in schedule three. The applicants received the child into their care and possession on 10th December 2009 and he has been in their continuous care since then.

3. The child in question was found abandoned in Matathani Sub-Location (Machakos District) on 14th December 2008 by a herder Simon Muli Nguku a herder. Muli took him and started taking care of the child until his health improved. He thereafter reported the matter to the village headsman who referred him to District Children's office and later on the matter was reported at Machakos Police Station and booked as O.B. No. [Particulars withheld]. The child was taken to Machakos Hospital where he was examined and discharged to Lumumba house temporarily and was later committed to Children's Welfare Society of Kenya vide care and protection case no. 14 of 2009. The police effort to trace the biological parent has been fruitless as evidenced by their final letter dated 2nd October 2009. Baby **D M** remained in the Child Welfare Society until 10th December 2009 when he was placed with the applicants pending adoption. The child was declared free for adoption by the Child Welfare Society of Kenya on 9th January 2014 and issued a certificate of declaring a child free for adoption serial no. 0631.

4. The Department of Children's Services filed their report on 1st July 2016. The Director observed that both applicants stay in a single room at pipeline, which they have partitioned, and share with the children. The house is well kempt though a bit squeezed. The Child Welfare found them suitable to adopt. They were observed to be mature, responsible and emotionally capable to care for the child. The report however points out that the child was placed with the applicants 5 years before the child was declared free for adoption, which is an anomaly. The report observes that the applicants were capable of taking care of the child, which they have, done to-date. The director however recommends the adoption of Dan Moses

by the applicants.

5. In a further report dated the 8/3/17 Child welfare has explained the issue of placing the child with the applicant as follows ***“Section 156(1) of the Children’s Act 2001 requires that arrangements for adoption commence after a child is at least six weeks old and when the child has been declared free for adoption. However, issuing a certificate is not proof that he child was available for adoption. Child Welfare Society of Kenya adheres to professional social work standards in preparing reports, and our report was professionally done.***

A professional Social Work report is the one that declares whether a child is adoptable or not. In our professional opinion, it was not necessary to issue a certificate immediately to make the case remain open through the child is free. This is because the child in this case was abandoned under unclear circumstances. It was therefore expedient that the agency gives the child a chance of being reunified with his family/relatives through social investigations and the certificate would be given as a last resort. Case inquiry ad social investigations revealed that the child was adoptable, and the child was therefore placed with Mr. S M K and J M M as the agency engaged in further efforts to trace the child’s birth family. The final police letter was acquired on 2nd October 2012 and the certificate was later issued on 09/01/2014 after comprehensive tracing efforts were complete”.

6. The guardian ad-litem filed her report is dated the 30/8/2016. The said report was favorable. The guardian ad-litem observed that the applicants are financially stable to take care of the child. The applicants are dedicated to the child. Baby D M appears happy having hit all the major milestones without any major health issue. She recommends the adoption of child by the applicants.

7. The applicants at the time of applying for adoption of baby D M did not have a child of their own but were later blessed with one. The applicants view adoption as a blessing to expand their family. They love D M and have adequately cared for him. The guardian ad litem recommends the adoption stating that the same will ensure D M has a fulfilled life spiritually, physically, emotionally and materially.

8. The applicants are both Kenyan citizens hence this is a local adoption. The reports are favorable and upon perusal of the documents annexed to the said application, it is clear that the applicants have met the legal requirements for adoption. This court finds that it would be in the best interest of D M to be adopted by the applicants. D M was abandoned by the biological mother, efforts by the police in tracing his parents or relatives have been fruitless and the child has remained unclaimed to-date. I however note that their place of residence is a single room. The applicants are advised to get a house with space to accommodate them and the children in separate rooms.

9. The Applicants **S M K** and **J M M** are hereby allowed to adopt **D M** and he shall henceforth be called **D K. E M K** (a sister to the 1st applicant) will be the child’s legal Guardian should misfortune befall the applicants. I direct the Registrar General to enter this order in the adoption register. The child was born in Kenya and is therefore a Kenyan by birth and is entitled all the rights that accrue to Kenyan citizens under the Kenya Constitution 2010 and the Kenya citizenship and Immigration Act. I hereby discharge the Guardian ad litem. It is so ordered.

Dated Signed and delivered this 24th Day of March 2017.

R. E. OUGO

JUDGE

In the presence of:

.....For the Applicants

Ms. Charity Court Clerk