



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS

ADOPTION CAUSE NO 4 OF 2017

IN THE MATTER OF E M

R M K1ST APPLICANT

P N K2ND APPLICANT

JUDGMENT

The 1st and 2nd Applicants are a male and female adult, and are both Kenyan nationals aged 55 and 54 years respectively and of sound mind. The Applicants got married in to each other customarily, and later solemnized their marriage at the Attorney General's Chamber in 2007. The Applicants wish to adopt a female child known as E M, and have moved the Court in this regard by way of an Originating Summons dated 9th March 2017, brought under sections 154, 156, 157, 158, 159, 160, 163, 164 and 170 of the Children Act.

The Applicants sought the following orders in the said Originating Summons:

- (i) That the Applicants be authorized to adopt EM a minor.
- (ii) That the child be declared a Kenyan citizen.
- (iii) That upon the making of the adoption orders the child be known as EMM and the Registrar-General do make the appropriate entry in the Adopted Children 's Register.
- (iv) That the court be pleased to appoint R M M and A M M as the Legal Guardians over the minor EM.

The proposed guardian *ad litem* and legal guardian also filed affidavits in Court giving their consent to their respective appointments.

The Applicants also filed an application by way of a Chamber Summons contemporaneously with the Originating Summons, whereby they sought orders that RT be appointed *guardian ad litem* in respect of the adoption of EM, and that the Director of Children's Department do prepare a home study report for the Court. The said orders were granted by this Court on 5th April 2017, after an examination by the Court of the proposed guardian *ad litem*.

The guardian *ad litem*'s presented her report dated 5th June 2017 at a hearing held on 7th June 2017. The Court at the hearing further admitted as evidence a declaration report by Child Welfare Society Report dated 10th February 2017 and filed in Court on 5th April 2017. A report by Emily Kimanzi, the Machakos sub-County Children Officer that was filed in court on 6th June 2017 was also presented and adopted by

the Court as her evidence during the said hearing.

E M is a female child who was born 19th October 2001 to Z M K. The whereabouts of the child's father are unknown. The minor is the first born child to the said Z M, and is a Form two student at [Particulars Withheld] Secondary School in Makueni. She has a younger sister called FN, who is eleven years old, and who is also the subject for adoption by the Applicants in separate proceedings. Both the subject child and her biological mother filed consents to the adoption.

The Applicants are grandparents to the subject child, as Z M K the child's biological mother, is a niece to R M K, one of the Applicants herein. They stated that the subject child and her biological mother have been their dependents, and the subject child had been continuously in their care since her birth. The biological mother to the minor herein is a single parent and suffering from a terminal illness, which was shown by medical reports filed in Court.

The child's mother was interviewed and counseled on the implications of an adoption order granted in respect to the subject child. She was in addition informed by the Court that an adoption order would permanently transfer parental responsibility over the child to the Applicants and that it is irreversible. She expressed full understanding of this consequence and confirmed her consent during the hearing.

The prospective adoptive parents said that their main motivation towards adopting the child is to have full parental responsibility over her legally, having supported the child from the time of her birth. They therefore feel that it will be in the best interest of the child to be put under their permanent custody so that they can be able to plan for her upkeep well. The Applicants also explained that there is no other family member willing to take up the custody of the two children of ZMK at once.

This Court notes that this is a kinship adoption matter. The Applicants in this adoption cause are maternal grandparents to the children. The Child Welfare Society of Kenya has assessed the Applicants as mandated by Section 177 (7) (d) of the Children Act, 2001, which assessment revealed that the Applicants qualify to be adoptive parents. Having raised their own children, the Applicants have acquired relevant experience in parenting, and as such are psychologically prepared to adopt and raise the child as their own. Furthermore, the Applicants are in good health, are of sound mind and have the financial capacity to take care of the child without strain. The members of the extended family have also welcomed the adoption and have given their consents to the same.

The Applicants have two adult children, and their son and daughter-in-law have consented to be the legal guardians of the child in the event the Applicants die before the child attains the age of majority. The reports filed in Court confirm that the Applicants are mature and responsible, and have bonded well with E M, 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 joint 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. In addition, the subject child and the child's biological mother have also given their consent pursuant to the provisions of section 158(4) of the Children Act.

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 bonded with E M, and 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 E M. Lastly, I observed the Applicants with E M in court, and it was evident that they had bonded well and that the said child is well taken care of.

This Court therefore forms the opinion that it would be in the best interest of E M 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.

I accordingly allow the application for adoption and order as follows:

1. The Applicants, R M K and P N K are hereby allowed to adopt E M.
2. The child shall henceforth be known as E M M.
3. As the child was born in Kenya, she is hereby declared a Kenyan citizen by birth.
4. The Registrar-General is directed to enter this adoption order in the adoption register.
5. R M M and A M M shall be the legal guardians of the child should such eventuality arise.
6. I hereby forthwith discharge the guardian *ad litem*.

It is so ordered.

Dated, signed and delivered in open court at Machakos this 24th day of July 2017.

P. NYAMWEYA

JUDGE