



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
ADOPTION CAUSE NO 8 OF 2015
AND
IN THE MATTER OF THE CHILDREN ACT
AND
IN THE MATTER OF BABY P
F K M.....1ST APPLICANT
A M K.....2ND APPLICANT

JUDGMENT

The 1st and 2nd Applicants are a male and female adult respectively, and are both Kenyan nationals aged 47 and 44 years respectively and of sound mind. They have been married to each other since 5th March 2014 under the African Christian Marriage Act, and are resident in [particulars withheld] area within Machakos County. The Applicants seek to adopt a male child known for the purposes of these proceedings as Baby P, and have moved the Court in this regard by way of an Originating Summons dated 12th March 2015 brought under sections 154, 156, 157, 158, 160, 162 and 163 of the Children Act.

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

- i. That the requirements of Section 158(4)(a) of the Children's Act be waived as provided for by section 159(1) of the Act.
- ii. That C M M in the said Republic be appointed guardian *ad litem* in this case.
- iii. That the applicants be authorised to adopt baby P and the baby be known as P M K.
- iv. That J M M be appointed the legal guardian of the child.
- v. That the Director of Children's Department do investigate the case and file a report.
- vi. And it is directed that the Registrar General shall make in the adopted children's register an entry recording the adoption in accordance with the particulars set out in the schedule attached hereto.

To facilitate this adoption, C M M and J M M filed consents in Court to be the guardian *ad litem* and legal guardian respectively of Baby P.

Prayer (v) was granted by this Court at the hearing held on 24th September 2015, and the Court on the same date admitted as evidence the report by Kenya Children's Home Adoption Society Report dated 18th May 2015 and filed in Court on 18th June 2016. Prayer (ii) of the said Originating Summons was granted during the hearing held on 2nd December 2015, when the Court also admitted into evidence the

guardian ad litem's report filed on the same date, and the report by the Machakos Sub-County Children Officer dated 26th November 2015 and filed in Court on 1st December 2015.

A summary of these adoption proceedings is as follows. Baby P is a male child who was found abandoned on 3rd April 2012 within [particulars withheld] township and the abandonment was reported to Kandara Police Station. The infant was subsequently placed under the care of Kandara Children's Home, following a court order issued on 18th March 2014 by the Kandara Children Court. The Kandara Police Station confirmed vide their letter of 20th September 2013 that neither the biological parents nor any other relatives had come to claim the child nor had they been traced.

The Applicants approached the Kenya Children's Home Adoption Society on 6th June 2013 for ratification for placement with a male child, with a view to eventual adoption. The Applicants opted to adopt a child after their doctors recommended a surgical procedure on the 2nd Applicant to enable them have children. Baby P was declared free for adoption by the Kenya Children's Home Adoption Society by their certificate No. 1109 dated 16th July 2014, and was placed with the Applicants on 29th August 2014 for foster care pending adoption.

The said Adoption Society in its report filed in Court observed that the Applicants are supported by their families in the adoption cause, and that they are socially, morally and spiritually upright and are able to take care of Baby P financially adequately without strain. It also recommended that the Applicants had verified their ability to take care and provide parental obligation to the infant for over eight months, and that the Applicants be allowed to adopt Baby P.

The Machakos Sub County Children Officer in his report filed in Court stated that from the home visit he found that the Applicants had bonded very well with Baby P, they are financially stable with the capacity of bringing up the child to adulthood as their own biological son. Lastly, the *guardian ad litem* in his report stated that the Applicants have taken good care of and have bonded well with Baby P, and recommended that they be issued with the adoption orders as prayed.

Having evaluated the facts of this adoption application, I note that it is a local adoption and that the Applicants are joint married applicants who are at least 25 years of age and are under the age of 65 years and wish to adopt a male child. They have therefore met the requirement set under Section 158 (1), (2) and (3) of the Children Act. In addition, since Baby P was found abandoned and no one has claimed him so far, the consent required to be given under section 158(4) of the Children Act can be dispensed with by this Court pursuant to the provisions of section 159(1)(a)(i) of the Children Act.

The Applicants have therefore fulfilled all the legal requirements relating to the adoption of Baby P. This court is 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 and emotional 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 P. Lastly, this court observed the Applicants with Baby Peter in court, and it was evident that they had bonded well and that Baby P is well taken care of.

This Court therefore forms the opinion that it would be in the best interest of Baby P 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. The Applicants, F K M and A M K are hereby allowed to adopt Baby P. The consent of the biological parents of the child is hereby dispensed with in accordance with section 159(1)(a)(i) of the Children Act, since they remain unknown. The child shall henceforth be

known as P M K. J M M shall be the legal guardian of the child should such eventuality arise. As the child was found abandoned in Kenya, he is hereby declared Kenyan by birth. The Registrar-General is directed to enter this adoption order in the adoption register. I hereby also discharge the guardian *ad litem*.

It is so ordered.

Dated, signed and delivered in open court at Machakos this 20th day of January 2016.

P. NYAMWEYA

JUDGE