



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS

ADOPTION CAUSE NO. 15 OF 2014

IN THE MATTER OF AN APPLICATION FOR THE ADOPTION OF BABY M.

JUDGMENT

INTRODUCTION

1. By Originating Summons dated 17th June 2014, the joint applicants of Kenyan citizenship who are resident in Kenya seek an order that they be authorized to adopt Baby M; that the child's name upon adoption be MMK; that a named legal Guardian, JMM, be appointed for the child; and that the Registrar General be directed to make the appropriate entries in the Adopted Children's Register, as provided for under section 170 of the Children Act.

JURISDICTION TO MAKE AN ADOPTION ORDER

2. Under section 163 of the Children Act, the court before making an order of adoption is required to satisfy itself of certain matters as follows:

“163. (1) The court before making an adoption order shall be satisfied—

(a) that every person whose consent is necessary under this Part, and whose consent is not dispensed with, has consented to and understands the nature and effect of the adoption order for which the application is made, and in particular in the case of a parent, understands that the effect of the adoption order will be permanently to deprive him or her of his or her parental rights;

(b) that the order if made will be in the best interests of the child, due consideration being for this purpose given to the wishes of the child, having regard to the age and understanding of the child, and to the ability of the applicant to maintain and educate the child;

(c) that the applicant has not received or agreed to receive, and that no person had made or given or agreed to make or give to the applicant, any payment or other reward in consideration of the adoption;

(d) that any person whose consent is dispensed with on the grounds of incapacity is still incapable of giving consent at the date of making the order;

(e) where the applicant is not a relative of the child, that reasonable steps have been taken to inform the relatives of the child of the proposed adoption and no relative able to accept the care of the child has expressed willingness to do so; and

(f) that both the applicant and the child have been assessed and evaluated by a registered adoption society in Kenya in accordance with the regulations made by the Minister and such report has been availed to the court.”

3. Finally, the court on making an adoption order has further power to appoint a guardian for the child as provided for under section 164 of the Children Act as follows:

“164. (1) The court at the time of making an adoption order may upon the application of the adopter, or of its own motion or in the case of applicants for an international adoption shall appoint any person approved by the adopter and whose prior consent thereto has been given in writing to be the guardian of the child in the event of the adopter, or both of the adopters where two spouses have applied for the adoption order, dying or becoming incapacitated before the child is of full age.

(2) The court may, at any time before the child is of full age, on the application of the adopter, or of the guardian appointed under subsection (1) or of the child, revoke such appointment and appoint any other person to be the guardian of the child.”

THE CHILD

4. The Child named M is a two years 10 months (DOB 8/2/2013) old African male child who was abandoned by her mother in the house of one A M of Mwanyani area, Machakos on the 21st March 2013, according to Machakos Police Station records OB NO. 23/22/3/13. He was initially placed on the same date under the care of Springs of Hope Children’s Home, Machakos by the Children Officer, Machakos and subsequently by order of the Machakos Children’s Court dated 25th March 2013 in Children Case No. 37 of 2013 and subsequently transferred to The Nest children home on 6th November 2013 by Order of the Court made on 5th November 2013. By a final letter dated 10th October 2013, the Machakos Police Station confirmed that the child has not been claimed since she was found abandoned. The child was declared free for adoption by the Little Angels Network Adoption Society Case Committee on 4th November 2013. The child was placed with the applicants as foster parents on 17th December 2013.

THE PROSPECTIVE PARENTS

5. The applicants are spouses of Christian faith, respectively husband and wife, who married at Nyeri on 19th August 2006 under the African Christian Marriage and Divorce Act cap. 151 and are aged 40 and 37, respectively. The applicants have been certified to be medically fit and without criminal record. They are pastor and teacher/missionary, respectively who have reasonable income and other assets acquired from proceeds of a school run by the couple which ‘acts as a source of income of the family earnings which complement the family source of income which comes from their church ministry work’ according to the children officer’s report. They have two daughters of their own. Aged 8 and 5 years. The applicants have appointed legal guardian, one JMM who has consented in writing to take care of the child in the event of death or incapacity of the applicants.

CONSENTS AND APPROVALS

6. The consents of the biological mother and father are, in the circumstances of the abandonment of the child herein, waived under section 159 of the Children Act.

STATUTORY REPORTS

7. The Little Angels Network adoption society and the Children Department have filed reports on the proposed adoption, respectively dated 4th December 2013 and 11th February 2015, both which are positive in recommending the adoption to be in the best interest of the child.

OBSERVATIONS AND FINDINGS OF THE COURT

8. The Court heard the testimony of the applicants, the guardian *ad litem* and a representative from the Little Angels Network adoption society, Ms. Grace Ekendi, the Deputy Sub-county Children Officer, Francis Njagi Kariuki as well as observed the child in court and his relation with the applicants.
9. From its own observation, the Court notes from the testimony of the witnesses that the child had bonded well with the applicants whom he had known since he was 2 months old as father and mother and with the applicants' two children whom he knew as sisters and who were protective of him as their brother.

BEST INTERESTS OF THE CHILD

10. The child, who was abandoned by his parents shortly after birth, clearly, requires a home with loving and caring parents. Having found that the applicants, who have lived with the child for the past two years, are suitable and able to provide for the needs of child, among others, loving care, a home, maintenance and education, and having considered the positive relevant statutory reports that the child has bonded with applicants and their other children, the court determines that the best interest of the child must lie in the continued life as a member of the applicants' family.
11. Accordingly, as urged by Counsel for the applicants, Ms. Musau, the Court finds that it is in the **best interests of the child**, to allow the adoption so that he is provided with a family, a home and the loving care of the applicants, with whom he has clearly bonded.

ORDERS

12. Accordingly, the final orders in Originating Summons dated 17th June 2014, are granted as prayed.
13. The Orders of the Court will issue in the full names of the applicants, the child and the legal guardians.

DATED AND DELIVERED THIS 18TH DAY OF JANUARY, 2016.

EDWARD M. MURIITHI

JUDGE

In the presence of: -

N/A for the Applicants

Mr. Ndola- Court Assistant.