



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS

ADOPTION CASE NO. 19 OF 2015

**IN THE MATTER OF BABY A (THE CHILD) AND ON THE APPLICATION FOR
AN ADOPTION ORDER BY D M K APPELLANT**

JUDGMENT OF THE COURT

1. Before the court is Originating Summons on the application for an adoption order under **Sections 154, 16 (1), 157 (1) a, 4 (a), 159 (4) (6), (7), (8) a, 160 (1) (2), (4) 163, 164 (1) and 170** of the **Children Act No. 8 of 2001** and **Section 24** of the **Interpretation and General Provisions Act, Cap 2 Laws of Kenya** and all enabling provisions of **Law**.

2. The summons seek the following orders:-

- i. THAT F K M of C/o Post Office Box Number 30 Oloitokitok in the Republic of Kenya be appointed Guardian ad litem.**
- ii. THAT the Director – Children’s Department, Office of the Vice President, Ministry of Home Affairs investigates the Applicant’s fitness to adopt and file a report.**
- iii. THAT the Applicant be authorized to adopt Baby A to be known as A M M.**
- iv. THAT B M Nd be appointed legal guardians of the child.**
- v. THAT the Registrar General be ordered to enter the child’s name in the Adoption Register.**
- vi. THAT the Child be considered a Kenyan Citizen.**
- vii. THAT the court be pleased to make any further orders it deems necessary.**

3. The application is premised on the grounds set out therein mainly that the orders sought are in the best interest of the child. The Application is also supported by statement and affidavit of the Applicant **D M K** filed herein on 13th August 2015.

4. The brief background of the child to be adopted, called **Baby A**, is that the child was abandoned by an unknown individual at **particulars withheld** on 17th April 2014. She was found by well-wishers who called one **Mr James Kabono Mwangi** who is the **Naivasha Kinungi Children Officer**. She was rescued and taken to **Naivasha District Hospital** for medical attention. The matter was reported to the **Naivasha Police Station**. She was placed with **Africa Gospel Church Baby Centre**, and was subsequently committed to the care and custody of the said home at **Naivasha Children’s Court** on 5th May 2014 vide **Care and Protection Case Number 37 of 2014**.

5. The name of the Applicant is **D M K**, an adult female of sound mind according to the annexed medical certificate marked 'DMK 6'. The Applicant is 65 years old and is single. She is employed as *particulars withheld*.
6. The child was committed to the Applicant's care by the **Particulars withheld** on 6th March 2015 and the Applicant has taken care of the child since then. The said **Particulars withheld** being the child House has no objection to the Applicant adopting the child and has granted the Applicant the approval and a certificate declaring the child free for adoption – See (DMK10"). The Applicant's sister **B M N** has agreed to be the legal guardian of the child and has undertaken to care for the child in case of any incapacity by the Applicant.
7. The application is also supported by Affidavit of **L W M** who is attesting to the fitness of **F K M** as being Guardian Ad Litem to the child.
8. The **Originating Summons** on the application was heard on 20th July 2016 where **F K M** PW1 gave evidence and testified in favour of the adoption being granted to the Applicant. The Applicant also testified and satisfied the court that she has a safe hand to place the child in. The application was also supported by the testimony of **D K** PW3, who is a representative from **Kenya Children Homes Adoption Society**. The witness submitted a report filed on 2nd September 2015. I have looked at the said report and the original certificates attached to it. The report names the child as **A J**. She is female and was born on 16th April 2014. The minor was abandoned when she was approximately a day old at **Particulars withheld**. She was found by well wishers who called one **Mr James Kabono Mwangi** of the **Naivasha Kinungi Children Office**. The child was rescued and taken to **Naivasha District Hospital** for medical attention. The matter was later reported to **Naivasha Police Station** and was recorded vide Occurrence Book Number 30/17/4/2014.
9. After discharge from the hospital the **Naivasha Sub-County Children's Office** sought placement of the child at **Africa Gospel Church Baby Centre** for care and protection and a vacancy was available. She was admitted at the home on 5th May 2014.
10. Information available indicated that the child is in good health and that the home ensured that the child's immunization schedule was followed as per the **Kenya Expanded Programme Guidelines** on immunizations. Her HIV test result was negative.
11. The minor was committed to **Africa Gospel Church Baby Centre** for care and protection at the **Naivasha Children's Court** on 5th May 2014 vide **Protection and Case Number 37/14** for a period of three years.
12. The **Naivasha Police Station** confirmed that no one went to the station to claim for the abandoned child and their efforts to trace the kindred of the child have been futile. The Good Samaritan **James Kabono Mwangi** was contacted on 5th February 2015 in order to give the current status of the case and he reported that since the child was abandoned no one had gone to claim for the child and he did not know the whereabouts of the child's next of kin. The minor was freed by the **Kenya Children's Homes Adoption Society Case Committee** on its sitting of 11th February 2015 and a **Freeing Certificate Serial No. 1213** issued pursuant to **Section 156 (1)** of the **Children's Act 2001**.
13. The Applicant's application to the **Kenya Children & Homes Adoption Society** was approved on 21st May 2014.
14. I have carefully considered the **Originating Summons** and the application. The application is adequately supported by original documents. The **Baby A** has been under the care of the Applicant since 6th March 2015. This court has also cross-examined the Applicant and is satisfied that the Applicant does not only deserve to be given adoption orders, but that it would be in the interest of the child to do so, and that the Applicant is capable of taking care of the baby. The **Kenya Children's Homes Adoption Society** has also given a certificate declaring the child free for adoption. The said certificate is **No. 1213**

and dated 11th February 2015.

15. Pursuant to the foregoing the judgment of this court is that the Applicant **D M K** is hereby authorized to adopt **Baby A** to be known as **A M M** and this court makes other orders as follows:-

- i. THAT F K M of C/o Post Office Box Number 30 Oloitokitok in the Republic of Kenya be and is hereby appointed Guardian ad litem.**
- ii. THAT the Director – Children’s Department, Office of the Vice President, Ministry of Home Affairs does investigate the Applicant’s fitness to adopt and file a report.**
- iii. THAT the Applicant be and is hereby authorized to adopt Baby A to be known as A M M.**
- iv. THAT B M N be and is hereby appointed legal guardians of the child.**
- v. THAT the Registrar General is ordered to enter the child’s name in the Adoption Register.**
- vi. THAT the Child be considered a Kenyan Citizen.**

16. That is the judgment of the court.

Dated and delivered at Machakos this 22nd day of September 2016.

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E. OGOLA

JUDGE