



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**

**ADOPTION CAUSE NO 7 OF 2014**

**AND**

**IN THE MATTER OF THE CHILDREN ACT**

**AND**

**IN THE MATTER OF BABY V**

J K N.....1<sup>ST</sup> APPLICANT

P M K.....2<sup>ND</sup> APPLICANT

**JUDGMENT**

The 1<sup>st</sup> and 2<sup>nd</sup> Applicants are a male and female adult respectively, and are both Kenyan nationals aged 40 and 29 years respectively and of sound mind. They have been married to each other since 21<sup>st</sup> October 2011 when they solemnized their marriage under the Marriage Act, and are resident in Wikivuvwa in Mwingi, within Kitui County. The Applicants seek to adopt a male child known as Baby V, and have moved the Court in this regard by way of an Originating Summons dated 9<sup>th</sup> October 2013 brought under sections 154, 156, 157, 158, 160, 163 and 164 of the Children Act.

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

- (i) That K M M be appointed Guardian *ad litem* in this case.
- (ii) That the Director of Children's Department do investigate the case and file a report.
- (iii) That K Y be appointed the legal guardian of the child.
- (iv) That the applicants be authorised to adopt baby V to be known as B N K.
- (v) That the Court be pleased to make any further orders it deems necessary

Prayer (i) of the said Originating Summons was granted during the hearing held on 30<sup>th</sup> September 2014, after an examination by the Court of the guardian *ad litem*, as was prayer (ii). The Court at a hearing held on 14<sup>th</sup> June 2016 admitted as evidence a declaration report by Kenya Children's Homes Adoption Society Report dated 11<sup>th</sup> April 2014 and filed in Court on 7<sup>th</sup> May 2015. The guardian *ad litem*'s report

dated 13<sup>th</sup> June 2016 and filed in Court on 14<sup>th</sup> June 2016, and the report by Philip Nzenge, the County Co-ordinator at the Kitui Children's Services, dated 10<sup>th</sup> May 2016 and also filed in Court on 14<sup>th</sup> June 2016 were also adopted by the Court as evidence during the said hearing. The proposed guardian *ad litem* and legal guardian also filed affidavits in Court giving their consent to their respective appointments.

Baby V is a male child who was found abandoned outside Mbagathi Hospital in Nairobi on 4<sup>th</sup> February 2011, and the abandonment was reported to Kenyatta Police Post. The infant was subsequently placed under the care and protection of Thomas Barnado House, and a court order formalizing his committal to the said children's home was issued on 15<sup>th</sup> June 2011 by the Nairobi Milimani Children Court. The Kenyatta Police Post confirmed in a letter dated 25<sup>th</sup> August 2011 that their efforts to trace the parents of the child had been futile.

The Applicants approached the Kenya Children's Home Adoption Society on 26<sup>th</sup> April 2011 for ratification for placement with a child with a view to eventual adoption. The Applicants were approved to be suitable adoptive parents and placed with Baby V on 7<sup>th</sup> December 2011. The 2<sup>nd</sup> Applicant is unable to have a biological child of her own due to a medical operation, hence their desire to adopt Baby V. The minor was declared free for adoption by the Kenya Children's Home Adoption Society on 11<sup>th</sup> October 2011 by way of freeing certificate number 738.

The reports filed in Court confirm that the Applicants are mature and responsible, and have bonded well with Baby V, 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 male child. They have therefore met the requirement set under Section 158 (1), (2) and (3) 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 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 Baby V. Lastly, I observed the Applicants with Baby V 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 Baby V 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, Joseph K N and P M K are hereby allowed to adopt Baby Victor.
2. The child shall henceforth be known as B N K.
3. K Y shall be the legal guardian of the child should such eventuality arise.
4. As the child was found abandoned in Kenya, he is hereby declared a Kenyan citizen by birth.
5. The Registrar-General is directed to enter this adoption order in the adoption register.
6. I hereby forthwith discharge the guardian *ad litem*.

It is so ordered.

**Dated, signed and delivered in open court at Machakos this 19<sup>th</sup> day of September 2016.**

**P. NYAMWEYA**

**JUDGE**