



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**  
**ADOPTION CAUSE NO 3 OF 2015**  
**IN THE MATTER OF BABY M N**

**B M K.....1<sup>ST</sup> APPLICANT**

**J K M.....2<sup>ND</sup> APPLICANT**

**JUDGMENT**

The 1<sup>st</sup> and 2<sup>nd</sup> Applicants are married to each other, are a male and female adult respectively, are both Kenyan nationals aged 61 and 51 years respectively, and are of sound mind. They Applicants had previously been married to each other under a customary marriage, and since 26<sup>th</sup> November 2010 under a statutory marriage when they solemnized their marriage under the Marriage Act. They reside in Yatta within Machakos County. The Applicants seek to adopt a male child known as Baby M N, and have moved the Court in this regard by way of an Amended Originating Summons dated 10<sup>th</sup> July 2015 brought under sections 154, 156, 157, 158, 159, 160, 162 and 163 of the Children Act.

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

- (i) That the requirements of section 158(4)(a) of the Children's Act be waived as provided for in section 159(1) of the Act
- (ii) That C N T be appointed the legal guardian of the child.
- (iii) That A K M be appointed Guardian *ad litem* in this case.
- (iv) That the Applicants be authorised to adopt Baby M N and the child be known as M M M, and the particulars be entered in the Adoption Children's Register accordingly.
- (v) That the Director of Children's Department do investigate the case and file a report.
- (vi) That the Court be deemed to make any other further orders it deems fit for the best interest of the child.
- (vii) That the Registrar General makes in the adopted Children's register an entry recording the adoption .

The proposed guardian *ad litem* and legal guardian filed affidavits in Court giving their consent to their respective appointments. Prayer (ii) of the said Originating Summons was granted during the hearing held

on 26<sup>th</sup> May 2015, after an examination of the guardian *ad litem* by the Court, as was prayer (v). The proposed legal guardian also confirmed her acceptance and understanding of her responsibilities, after she was examined by the Court during a hearing held on 21<sup>st</sup> September 2016.

The report by Kenya Children's Homes Adoption Society Report dated 26<sup>th</sup> May 2015 and filed in Court on 3<sup>rd</sup> August 2015; the report dated 20<sup>th</sup> January 2016 and filed in Court on the same date by Jotham Kamau Kahihu, the Machakos sub-County Children Officer; and the report by guardian *ad litem*'s dated 27<sup>th</sup> January 2016 and filed in Court on 29<sup>th</sup> January 2016 were presented and admitted as evidence at the hearing held on 21<sup>st</sup> September 2016.

From the various reports, the Court noted that Baby M N is a male child who was found abandoned at the Provincial General Hospital in Nakuru after the mother left him in a ward, and the abandonment was reported to the Nakuru Police Station. A letter from the said police station dated 20<sup>th</sup> July 2009 confirmed the report of abandonment. The infant was subsequently admitted at the Africa Gospel Church Baby Centre on 4<sup>th</sup> August 2009, and a court order formalizing his committal to the said children's home was issued on 3<sup>rd</sup> September 2009 by the Nakuru Children's Court. The Nakuru Police Station confirmed in a letter dated 19<sup>th</sup> September 2010 that no one has gone to claim the station to claim the minor, and that their efforts to trace the parents and relatives of the child had been futile.

The Applicants approached the Kenya Children's Home Adoption Society on 23<sup>rd</sup> October 2010 for placement with a child with a view to eventual adoption. The Applicants were approved to be suitable adoptive parents and placed with with Baby M N on 4<sup>th</sup> October 2012. The Applicants are not able to have a biological child due to medical conditions, and their need to have a child to love and share their resources with motivated them to adopt Baby M N. The minor was declared free for adoption by the Kenya Children's Home Adoption Society on 21<sup>st</sup> June 2011 by way of freeing certificate number 678.

The reports filed in Court confirm that the Applicants have bonded well with Baby M N, are financially stable, and able to provide material, emotional, educational and spiritual support to the child. 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. In addition, since Baby M N was 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.

This court is also satisfied that the Applicants are qualified and able to take care of the child. The reports filed in Court pursuant to home visits by the guardian *ad litem*, the Adoption Society and the Children Officer also do recommend the Applicants' adoption of Baby M N. Lastly, I observed the Applicants with Baby M N 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 M N 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, B M K and J K M are hereby allowed to adopt Baby M N.
2. The child shall henceforth be known as M M M.

3. C N Tito 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 and particulars of M M M in the Adoption Children's Register.
6. I hereby forthwith discharge the guardian *ad litem*.

It is so ordered.

Dated, signed and delivered in open court at Machakos this 16<sup>th</sup> day of November 2016.

**P. NYAMWEYA**

**JUDGE**