



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
ADOPTION CAUSE NO 16 OF 2016
IN THE MATTER OF THE ADOPTION OF BABY E
AND ON THE APPLICATION FOR AN ADOPTION ORDER

BY

J M W.....1ST APPLICANT

M N M.....2ND APPLICANT

JUDGMENT

The 1st and 2nd Applicants are a male and female adult respectively, and are both Kenyan nationals aged 48 and 43 years respectively and of sound mind. They Applicants are married to each other, and are resident in Machakos County. They solemnized their marriage on 22nd March 2003 under the Marriage Act, and they seek to adopt a male child known as Baby E and have moved the Court in this regard by way of an Originating Summons dated 5th April 2016.

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

- (i) That the Applicants be authorized to adopt baby E.
- (ii) That the consent of the biological mother be dispensed with.
- (iii) That upon making the adoption order the said child be known as E B M.
- (iv) That the Registrar General do make the appropriate entry of E B M in the Adopted Children's Register.
- (v) That the child E B M be presumed to be a Kenyan citizen born in Kenya.
- (vi) That N N J and A J K be appointed the legal guardians of the child E B M.

The Applicants also filed also filed an application by way of a Chamber Summons contemporaneously with the Originating Summons, whereby they sought orders that P M M be appointed *guardian ad litem* in respect of the adoption of Baby E, and that the Director of Children's Department do prepare a home study report for the Court. The said orders were granted by this Court on 21st September 2016 after an examination by the Court of the proposed guardian *ad litem*.

The Court on the same date also examined the proposed legal guardian A J K, who confirmed that he and

his wife N T J had consented to be legal guardians. The Court also adopted a social inquiry and declaration report both dated 30th April 2014 and filed in Court on 21st September 2016 by the Little Angels Network Adoption Society as their evidence in this adoption cause.

The Court at a hearing held on 25th October 2016 also admitted as evidence a report dated 14th October 2016 by J K, the Machakos Sub County Children Officer, and which was filed in Court on 24th October 2016 and presented by Celastine Nthiani, the Principal Children's Officer at Machakos County. The guardian *ad litem*'s report filed in Court on 25th October 2016 was also adopted on the same date as his evidence.

Baby E is a male child who was born on 21st May 2013 at Thika Level 5 Hospital of an unknown mother, and abandoned at the hospital on the same date, and a report thereof made to the Thika Police Station. Baby E was thereafter committed into the legal custody of Open Hand Children's Home on 19th June 2013 by the Thika Principal Magistrate's Court. The child remained unclaimed upto the time of making of the application for adoption.

Baby E was placed into, and has been in the care and possession of the Applicants since 26th November 2013, and the minor was declared free for adoption by the Little Angels Network Adoption Society on 30th April 2014 by way of freeing certificate number 001449. The reports filed in Court by the Guardian *ad litem*, the Little Angels Network Adoption Society and Machakos Sub-County Children's Officer confirm that the Applicants have bonded well with Baby E, and that the said minor is happy, healthy and well taken care of. All of them recommended that that adoption would be in the best interests of Baby E.

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 E 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. I observed the Applicants with Baby E in court, and it was evident that they had bonded well, and that the said child is well taken care of. I have therefore formed the opinion that it would be in the best interest of Baby E 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, J M W and Margaret N M are hereby allowed to adopt Baby E .
2. The child shall henceforth be known as E B M.
3. The Registrar General is hereby directed to make the appropriate entry of E B M in the Adopted Children's Register.
4. As E B M was found abandoned in Kenya, he is hereby declared a Kenyan citizen by birth.
5. N N Jand A J K shall be the legal guardians of the child should such eventuality arise.

6. I hereby forthwith discharge the guardian *ad litem*.

It is so ordered.

Dated, signed and delivered in open court at Machakos this 21st day of December 2016.

P. NYAMWEYA

JUDGE