



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**ADOPTION CAUSE NO. 100 OF 2016**  
**IN THE MATTER OF THE CHILDREN ACT, 2001**

**AND**

**IN THE MATTER OF P K S**

K S.....1<sup>ST</sup> APPLICANT

D S S.....2<sup>ND</sup> APPLICANT

**JUDGMENT**

K S (“herein referred to as the 1<sup>st</sup> Applicant”) a Swiss national resident in Kenya and D S S (“herein referred to as 2<sup>nd</sup> Applicant”) a Kenyan Citizen is a married couple who wish to adopt the P S (“herein referred to as the child”). The 2<sup>nd</sup> Applicant is the biological mother of the child, and he is brother to B S and R S.

The Applicants were married in 2014 as evidenced by marriage Certificate No. [particulars withheld]. They reside in [particulars withheld] off Dennis Pritt Road. The Applicants seeks by their application to be allowed by this Court to adopt the child. The child who is the subject of the present adoption proceedings was born on 1<sup>st</sup> May 1999 to the 2<sup>nd</sup> Applicant. He resides with his mother and adoptive father and siblings. He is in [particulars withheld] Institute studying languages and Computers. He does not know and has never met his biological father. At first he lived with his maternal grandmother in Kisii. When his mother and adoptive father married he joined them and lives with them to date.

In an application filed on 6<sup>th</sup> October 2016, the Applicants sought among others, orders from this Court that D K B be appointed as the child’s guardian ad litem, and that the Director of Children’s Services be ordered to investigate their suitability to adopt the child and submit a report. They further sought an order that upon adoption the child be known as P K S.

The Applicants also sought to have the Court appoint R M N maternal grandmother as the child’s legal guardian. On 6<sup>th</sup> October 2016, this Court issued an order appointing D K B as the child’s guardian ad litem, and further directing the guardian ad litem and the Director of Children’s Services to file their respective reports in Court.

The Director of Children’s Services report in respect of the proposed adoption of the child by the Applicants was filed on 27<sup>th</sup> October 2016. The Children’s Officer from the Department visited the Applicants’ residence on 26<sup>th</sup> October 2016 and found the minor bonded well with the 1<sup>st</sup> Applicant and the home conducive environment for raising the family. However this report raised the following issues;

- 1) **The child was not declared free for adoption**
- 2) **The child did not write consent that he wanted to be adopted**
- 3) **The 1<sup>st</sup> Applicant did not attach or produce documents to confirm financial status, criminal clearance and medical record.**
- 4) **The 1<sup>st</sup> Applicant is a sole foreign male applicant aged 75 years old; contrary to Section 158 (a) and 2 (c) of the Children Act 2001 that restricts age of an adoptive parent to 65 years old.**

Pursuant to **Section 156(1)** of the **Children Act**, Change Trust Adoption Society, prepared and filed in Court on 16<sup>th</sup> November 2016 a favorable report in respect of the proposed adoption of the child by the Applicants. The child, P K was interviewed and explained to what involved his adoption to the Applicants and he was agreeable.

Other relevant documents attached to the Report are as required by Section 158 (4) of children Act 2001;

- 1) **The child's written consent of 15<sup>th</sup> November 2016.**
- 2) **Child's birth certificate Number [particulars withheld],**
- 3) **1<sup>st</sup> Applicant's written consent of 5<sup>th</sup> October 2016 to adopt P K as his son,**
- 4) **2nd Applicant's written consent of 5<sup>th</sup> October 2016**
- 5) **Child's medical report of 31<sup>st</sup> October 2016**

On 7<sup>th</sup> November 2016 the Case Committee interviewed the Applicants and conducted home visit filed Social Inquiry and Home Study report. They interviewed the child on 10<sup>th</sup> November 2016 and found him free for adoption and issued the certificate to declare the child free for adoption **Serial Number [particulars withheld]**.

The guardian ad litem, D K B also filed the statutory report on 16<sup>th</sup> October 2016 made under **Section 160(2)** of the **Children Act** in which he noted that the proposed adoption of the child by the Applicant is in the best interest of the child.

This is a kinship adoption. The Applicants have satisfied the legal requirements of the adoption under **Section 163 of the Children Act 2001**. The challenge to this adoption is that the 1<sup>st</sup> applicant is beyond the requisite age to adopt a child; he is 75 years old and the required age is 65 years old. This Court considers that **Section 158 (1) of the Children Act 2001 provides;**

**An adoption order maybe made upon the application of a sole Applicant or jointly by two Applicants where the Applicant or at least one of the joint Applicants;**

**a) has attained the age of 25 years and is at least 21 years older than the child but has not attained 65 years.....**

In the instant case although the 1<sup>st</sup> Applicant is above 65 years old, the 2<sup>nd</sup> Applicant is 43 years old. Therefore the couple meets the required age as one of them is below 65 years old. The Applicants are married, in good health, financially, emotionally and socially capable of taking care, providing love care and support to the child for his growth and development and integration as an adult member of society.

From the foregoing, the instant application by the Applicants complies with the laid down legal standards

for kinship adoption. It is evident that the Applicants have fulfilled all the legal requirements relative to the adoption of the child. The Applicants attached their certificates of good conduct, financial documents and medical records as sought by Director of Children Services.

The consent of the biological father of the child was dispensed with; his biological father could not be traced to give consent. This Court has satisfied itself 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 Director of the Children's Services established that the Applicants have the financial and emotional capability to provide for the upkeep and education of the child.

This Court observed the Applicants with the child in Court and it was evident that in the period that the Applicants have had the custody of the child, the child has bonded well with them. The child considers the 1<sup>st</sup> Applicant to be his father and 2<sup>nd</sup> applicant is his biological mother.

On the basis of a careful examination of the documents presented before me as well as the observations made therein, this Court has formed the opinion that it would be in the best interest of the child to be adopted by the Applicants. Hence, this Court allows the Applicants' application. K S and D S S are hereby allowed to adopt P. Henceforth, the child shall be known as P K S. His date of birth is 1<sup>st</sup> May 1999. His place of birth shall be Nairobi County. He is presumed to a citizen of Kenya by birth. R M N; maternal grandmother; shall be the legal guardian of the child should such eventuality arise.

If and when the family leaves the jurisdiction of this Court or relocate to Switzerland; under **Section 163 (f) of the Children Act 2001**; the Applicants shall provide bi annual periodical reports of the child from the nearest Court or Adoption Agency or Children's department in the resident country through the Embassy to the Director of Children Services in Kenya for 3 years. This Court directs the Registrar General to duly enter this order in the Adoption Register. The guardian ad litem is hereby discharged. It is so ordered.

**DATED AT NAIROBI THIS 13TH DAY OF DECEMBER 2016**

**M. W. MUIGAI**

**JUDGE**

**In presence of:-**

Ms. Kosgey holding brief for Mr. Nyangito.

**RECTIFIED UNDER SECTION 99 & 100 CIVIL PROCEDURE ACT THIS 9<sup>TH</sup> DAY OF JANUARY, 2017**