



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MOMBASA**  
**FAMILY DIVISION**  
**ADOPTION CAUSE NO. 13 OF 2013**

**IN THE MATTER OF AN APPLICATION FOR THE ADOPTION OF BABY D M**

**JUDGMENT**

**INTRODUCTION**

1. By Originating Summons dated 19<sup>th</sup> July 2013, the applicant spouses seek an order that they be authorized jointly to adopt Baby D M and that the child be named D O henceforth and that the Registrar general be directed to make the appropriate entries in the Adopted Children's Register in respect of Baby D M.

**THE CHILD**

2. The Child is an African male who was found on 15<sup>th</sup> June 2011 (also his estimated date of birth) abandoned in a bush around Vipingo area of Kilifi County. The child was on 16<sup>th</sup> June 2011 placed under the care Good life Orphanage through Kijipwe Police station and subsequently formally placed under its care and protection by the Children's Court at Kilifi on 29<sup>th</sup> November 2012 and thereafter declared by the Little Angels Network, an Adoption Society, free for adoption on 20<sup>th</sup> March 2013. The child was placed with the applicants as care parents on 20<sup>th</sup> June 2012 and they took the child in their custody on 5<sup>th</sup> August 2012.

**THE PROSPECTIVE PARENTS**

3. The applicants are Kenyan spouses, the male applicant is 46 years old and the female applicant is 43 years old. The former has two children both girls by previous marriage aged 14 and 11, the wife dying when the second girl was three months old. The applicants have been married since 2005 under customary marriage later formalized in church on 13<sup>th</sup> May 2012. For medical reasons the female applicant is not able to bear children. The applicants live in an owner-occupied three bedroomed house at Malindi. The male applicant works as a carpenter earning approximately Ksh.20,000/- per month while the female applicant was said to make Ksh.30,000 - 35,000/-. They have lived with the two girls and the child the subject of these proceedings for four years since they took him on 5<sup>th</sup> August 2012. The child attends school at Malindi [Particulars withheld] School the same school as the applicants' second girl, L. The Case Committee of the adoption society found the applicants suitable at its sitting of 20<sup>th</sup> June 2012.

**CONSENTS**

4. The consent of the biological parents of the child under section 159 is waived in view of the circumstance in which the child was found abandoned.

### **STATUTORY REPORTS**

5. The guardian *ad litem*, Mr. Peter Gerald Mutua and Mr. Eric Lee Mugaisi, the sub-County Children's Officer, Malindi on behalf of the Director of Children Services filed respective reports respectively dated 9<sup>th</sup> December 2013 and 1<sup>st</sup> July 2014 on the proposed adoption both which were positive in recommending the adoption to be in the best interest of the child.

### **OBSERVATIONS AND FINDINGS OF THE COURT**

6. The Court heard the testimony of the male applicant father [the female applicant was unwell and hospitalized and therefore not available to testify], the guardian *ad litem*, a representative of the Little Angels Network the adoption society that facilitated the adoption, and the Children's Officer. I also made observation of the appearances of the child in court where I recorded as follows:

*"The court has seen the child who is happy and bubbly and running all over the court and he appeared to bond well with the father and sister, L."*

### **BEST INTERESTS OF THE CHILD**

7. The child has lived with the prospective adoptive parents since 5<sup>th</sup> August 2012. He has been assimilated in the applicants' family, enjoying the home facilities and schooling and other family activities jointly with the applicants' other family members for the long period of staying. It would be disruptive to the child's proper development if the environment he has learnt to consider his family home is taken away. The best interest of the child must lie in the continued life as a member of the applicants' family as he has come to consider himself over time. Accordingly, I find that it is in the **best interests of the child** to allow the adoption so that he is permanently provided with a home and loving care by the applicants with whom he has clearly well bonded as a child to his parents. I find that the applicants are able to provide for the child whom they desire to have as a brother to their other two female children.

### **ORDERS**

8. Accordingly, the final orders in Originating Summons dated 19<sup>th</sup> July 2013 are granted in terms of prayers 4 and 5 thereof, that –
  - a. The Applicants **M H A** and **J O O** are hereby authorized to jointly adopt Baby **Da M** and the child be henceforth called **D O** and
  - b. The Registrar-General is hereby directed to make the appropriate entries in the Adopted Children's Register in respect of Baby **D M**.

**DATED SIGNED AND DELIVERED THIS 30<sup>TH</sup> DAY OF MARCH 2015.**

**EDWARD M. MURIITHI**

### **JUDGE**

In the presence of: -

Miss Wayodi for Mrs. Nzioki for the Applicants

Ms. Linda - Court Assistant.