



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

ADOPTION CAUSE NO. 79 OF 2014 (OS)

IN THE MATTER OF THE CHILDREN ACT NO. 8 OF 2001

AND

IN THE MATTER OF BABY S.A.O.

AND

IN THE MATTER OF AN APPLICATION FOR ADOPTION BY

Z M O

AND

E K O

JUDGMENT

1. The applicants Z M O and E K O are a married couple, Kenyan citizens, who seek to adopt child S A O. They have four biological children, all daughters, and are looking for a son. The 1st applicant is a businessman and the 2nd applicant is a nurse employed by *[particulars withheld]*.
2. Child S A O. is currently 8 years old. He is reported to have been born on 10th February 2007 and abandoned on the same day at Thika District Hospital by his mother who left no details of her identity. The matter was reported to Thika Police Station and recorded under OB NO. 11/15/3/2007 and the child referred to Mama Ngina Children's Home for care and protection.
3. This case does not add up. This is because the formal committal to the Home by the Children's Court at Thika is indicated to have been done on 2nd April 2006. That would be a year before the child was born and abandoned.
4. Secondly, the child was declared free for adoption by the Child Welfare Society vide certificate No. *[particulars withheld]* on 29th November 2013. There is a foster care agreement dated 15th June 2007. This shows that the child was placed with the applicants before it was declared free for

adoption. This offended **section 156(1)** of the **Children Act 2001** which provides that:-

“156(1). No arrangement shall be commenced for the adoption of a child unless the child is at least six weeks old and has been declared free for adoption by a registered adoption society in accordance with the rules prescribed in that behalf.”

It is an offence to contravene this provision.

5. I am aware that under **section 4** of the **Children Act**, the Court has to consider the best interests of the child as being the first and paramount consideration. The court is called upon to adopt a course of action that is calculated to safeguard and promote the rights and welfare of the child in question. Child S A O. has lived with the applicant since 2007, and the report of the Director of Children's Services filed on 11th December 2014 shows that it has bonded well with the family. However, to order the adoption would be to countenance the illegal process that has been undertaken as shown in the foregoing. This is why, quite regrettably, the originating summons shall not be granted. The adoption request is hereby declined.

DATED at Nairobi this 30th day of July 2015

A.O. MUCHELULE

JUDGE

DELIVERED at Nairobi this 31st day of July 2015

L. ACHODE

JUDGE