



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**

**Adoption Cause No 17 Of 2014**

**And**

**In The Matter Of The Children Act**

**And**

**IN THE MATTER OF BABY VB**

RMM.....1<sup>ST</sup> APPLICANT

MYM.....2<sup>ND</sup> APPLICANT

**JUDGMENT**

The applicants, RMM and MYM, are a Kenyan male and female adult aged 51 and 49 years respectively at the time of their application and are of sound mind. They have been married to each other since 1996 under Kamba Customary Law, and solemnized their marriage in the year 2013 under the Marriage Act. The Applicants seek to adopt a child known for the purposes of these proceedings as Baby VB, and have moved the Court in this regard by way of an Originating Summons dated 24<sup>th</sup> June 2014 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 Originating Summons:

1. That the requirements of section 158(4)(a) of the Children's Act be waived as provided for by section 159(1) of the Act.
2. That MKK be appointed guardian *ad litem* in this case.
3. That the applicants be authorised to adopt baby VB and the baby be known as VKM.
4. That JMM be appointed the legal guardian of the child.
5. That the Director of Children's Department do investigate the case and file a report.
6. That the Registrar General shall make in the adopted Children's Register an entry recording the adoption.

Prayers 2 and 5 were granted by this Court on 21<sup>st</sup> October 2014, and the outstanding prayers in the Originating Summons were to await full hearing.

A summary of these adoption proceedings is as follows. The Applicants approached the Kenya Children's Home Adoption Society (hereinafter referred to as "the Adoption Society") on 3<sup>rd</sup> May 2013, seeking to be ratified for placement with two children aged two to three years old with a view to eventual adoption. After the necessary processes including a home study, the Applicants were approved to be suitable potential adoptive parents by the Adoption Society's case committee on 15<sup>th</sup> January 2014 for placement with one child first. They were subsequently placed with Baby VB on 30<sup>th</sup> January 2014.

Baby VB is a male child who was born on/or about 30<sup>th</sup> July, 2010, and was found abandoned in Rimpa area on 27<sup>th</sup> September 2010. A report of the abandonment made on the same day to Ongata Rongai Police Station. The infant was placed under the care of Fatima Children's Care and Nutrition Centre by the police, and later formally committed to Thomas Barnado House following a court order issued on 11/12/2013 by the Nairobi Children's Court. Baby VB was declared free for adoption by the Adoption Society by their certificate No 1039 dated 15<sup>th</sup> January 2014. The Ongata Rongai Police Station in a letter dated 18<sup>th</sup> November 2013 reported that investigations had been done and that no one had gone to the station to claim the baby since he was abandoned.

The Applicants are resident in Mukuyuni in Makueni County in Kenya, and the 1<sup>st</sup> Applicant is a driver and a farmer while the 2<sup>nd</sup> Applicant is a farmer/home maker. The Applicants are motivated to adopt a child arising from unsuccessful attempts to have their own children due to MYM's medical complications. To facilitate this adoption, MKK and JMM filed consents in Court to be the guardian *ad litem* and legal guardian respectively of Baby VB.

The Adoption Society also prepared a report dated 6<sup>th</sup> November 2014 declaring the child free for adoption, which report was filed in Court on 18<sup>th</sup> November 2014 and adopted by the Court as evidence. The Adoption Society indicated that the Applicants have verified their ability to take care and provide parental obligation to Baby VB, and that its case committee was satisfied that the Applicants can proceed to court to finalise the adoption process. Further, that adoption of Baby VB by the Applicants would be in the child's best interest.

The District Children Officer, Makueni District, also filed a report in Court dated 5<sup>th</sup> May 2015, upon orders of this Court. The report recommended that the Applicant had fully bonded with Baby VB, and that the child was well taken care of, in good physical health and was provided with the basic needs. Further, that the child was currently at a primary school and was assured of quality education, and was comfortable with the home environment.

Lastly, the guardian *ad litem*, M.K.K., filed a report in Court on 29<sup>th</sup> October 2015 in which he reiterated the observations made by the Children Officer as to the child bonding with the Applicants, and being taken good care of.

Having evaluated the facts of this adoption application, I note that it is a local adoption, and that the Applicants are joint married applicants who are at least 25 years of age and are under the age of 65 years and 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 VB was found 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.

The Applicants have therefore fulfilled all the legal requirements relating to the adoption of Baby VB. This court is satisfied 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 Services established that the Applicants have the financial and emotional capability to provide for the upkeep and education of the child. The reports filed in Court pursuant to these visits also do recommend the Applicants' adoption of Baby VB. Lastly, this court observed the Applicants with Baby VB in court, and it was evident that they had bonded well.

This court therefore forms the opinion that it would be in the best interest of Baby VB 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. The Applicants, RMM and MYM are hereby allowed to adopt Baby VB. The consent of the biological parents of the child is hereby dispensed with in accordance with section 159(1)(a)(i) of the Children Act, since they remain unknown. The child shall henceforth be known as VKM. JMM shall be the legal guardian of the child should such eventuality arise. As the child was found abandoned in Kenya, he is hereby declared Kenyan by birth. The Registrar-General is directed to enter this adoption order in the adoption register. I hereby also discharge the guardian *ad litem*.

It is so ordered.

Dated, signed and delivered in open court at Machakos this 18<sup>th</sup> day of November, 2015.

**P. NYAMWEYA**

**JUDGE**