



IN THE HIGH COURT OF KENYA AT MURANG'A

ADOPTION CAUSE NO. 4 OF 2013

IN THE MATTER OF THE CHILDREN'S ACT

AND

IN THE MATTER OF ADOPTION OF RD

JUDGMENT

By an Originating Summons dated 20th November, 2012 lodged in this Court under **section 154** of the **Children Act**, FMG and MMM applied to adopt baby RD. Alongside the Originating Summons, they also filed a chamber summons application seeking to have one EMN appointed as the guardian *ad litem*.

According to the reports filed in court by the Director of Children's Services and the Child Welfare Society of Kenya, the baby that the applicants are seeking to adopt was found abandoned in Ruiru on 16th January, 2009. He was rescued by police officers from Ruiru Police Station and taken to Thika District Hospital for a medical check-up and treatment. The report of the abandonment was made at Thika police station although the investigations on the child's family and relatives were conducted by the officers from both Thika police station and Ruiru police post.

While the investigations were being undertaken, the child was placed at **Happy Life Children's Home** on 11th February, 2009 for care and protection. By a care and protection order in Protection and Care Case No. 12 of 2009, the child was formally committed to this institution through the District Children's Officer, Thika.

By the time the police finalised their investigations in January, 2010 no one had laid any claim on the child. The Child Welfare Society of Kenya also made efforts to trace the parents or relatives of the child but none of these people could be traced.

On 15th February, 2010 the child was placed with the applicants for fostering pending a formal adoption. As at the time the application was made, the child was still under the care and protection of the applicants.

This is the background of the adoption proceedings herein. In support of the application, the first applicant FMG told the court that he was born in 1960 and that he married the second applicant in 1982. Although the applicants have lived together as husband and wife ever since, their marriage has never been blessed with any children and it is unlikely that they will have any child of their own in future.

The applicant informed the court that they have lived with the child since the year 2010 and they now want to adopt him as if he was their own biological child. The applicant told the court that he understood

the consequences of an adoption order being made in their favour. He together with his wife, the co-applicant undertook to care for the child as they would have cared for their own biological child. Indeed, the applicant told the court, that ever since the child was placed in their custody, they have always provided him with the basic needs, including food, shelter, clothing and education.

The applicants are of Christian faith and Kenyan nationals; they reside in Murang'a County and have no intentions of relocating from this country. Amongst the documents they attached to the affidavit in support of their application were copies of their national identification cards showing that they are Kenyan nationals and that they were born in 1960 and 1967 respectively.

The male applicant said that he is a businessman and thus he has the necessary means to provide for the child; in support of this fact, he produced in court a bank statement which indicated that as at 22nd October, 2012 he had a credit balance of Kshs. 85,531.75 in his bank account.

The second applicant associated herself with all that her husband, the co-applicant had told the court. She added that she does not solely rely on her husband but that she also runs a shop out of which she gets extra income to support the family.

The second applicant also told the court that she had accepted baby RD as her own child and she will do so for the rest of her life. She also said that as the time this application was lodged, the child had been enrolled in a private academy.

The court had occasion to interact with the child; he appeared healthy, happy, intelligent and quite active. He told the court that he is six years old and that he goes to [Particulars Withheld] School. He said that he is called DMG although he is also referred to as "Pastor"; I understood this to be his nick-name. He referred to the applicants as his mother and father respectively and that he fondly loved both of them.

Apart from hearing from the applicants and baby R, the court also heard from the *guardian ad litem*. He informed the court that the applicants are his neighbours and that he has known them for over ten years. He told the court that he is ready to take over parental responsibility of baby RD should anything happen to the applicants.

The representative from Child Welfare Society of Kenya told the court that indeed the child had been rescued by the police and placed in a children's home. Since nobody had laid any claim on the child, this officer was of the view that as an adoption Society, it is in the best interest of the child to be adopted and be allowed to grow in a family set-up where he would feel like the rest of the children with parents. In support of its position, the Society invoked **section 159(1) (c) of the Children Act, 2001** which is to effect that:- ***"abandonment may be presumed if the child appears to have been abandoned at birth or if the person or institution having care and possession of the child has neither seen nor heard from a parent or guardian for a period of at least six months"***.

The officer confirmed all the necessary conditions for the adoption of the child had been complied with; by a certificate dated 26th November, 2012, issued by the Child Welfare Society, the child had been declared free for adoption. The applicants had been assessed on their willingness and capability to cater for the child and a home study report to in this regard had been filed in court. In its report, the applicants were assessed to be persons who understood that the adoption order is irrevocable and that the child whom they are adopting will have a right to inherit their property. It was the Society's recommendation that the applicants are suitable persons to adopt baby RD.

Besides the declaration by the Child Welfare Society of Kenya the Director of Children's Services prepared and filed in court a home-study report in respect of the applicants and baby RD. It was established that the applicants were married in church and had a marriage certificate to this effect.

As for their means, the report established that the applicants run small businesses which bring an accumulated monthly income of about ten thousand Kenya Shillings (Kshs. 10,000/=); the Director of Children's Services was of the view that the applicants were economically stable and able to meet the

basic needs of the child.

I have duly considered the applicant's application and what they told the court in support of this application. More importantly I have given due regard to the interests of the child who, in my assessment, has bonded well with the applicants; he does not know them in any other capacity other than being his parents. In fact, according to the report filed by the Director of Children Services, the child does not know that the applicants are not his biological parents.

I have considered the two reports by the Child Welfare Society of Kenya and the Director of Children Services. These two reports are in agreement in their recommendations that adoption of baby RD would be in his best interests and that the applicants are the best placed persons, in the circumstances, to adopt him.

I am persuaded that considering his past and present circumstances the child needs the alternative family care; I am equally persuaded that the applicants can provide this alternative care. I am satisfied that they both understand the consequences of an adoption order in respect of baby RD and their responsibilities towards him.

Further, in view of the reports by the Child Welfare Society of Kenya and the Director of Children Services I am also satisfied that the applicants have not only satisfied the conditions for adoption spelt out in **section 158** of the Children Act but that the requisite consents under that provision have been obtained. In the circumstances I am inclined to order that the child, RD, be and is hereby adopted by the said applicants. I further order that the said minor be renamed DGM and the Registrar General is ordered to make the appropriate entries in the Adopted Children Register accordingly.

Signed, dated and delivered in open court this 17th day of October 2014

Ngaah Jairus

JUDGE