



NO445/2014

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
ADOPTION CAUSE NO. 12 OF 2013
IN THE MATTER OF THE CHILDREN'S ACT, 2001
AND
IN THE MATTER OF ADOPTION OF BABY P N
(A CHILD)
BY
J K AND
A MJOINT APPLICANTS

R U L I N G

1. Baby **P** (Child) was placed with **Mr. J K** and **Mrs. A M K** (Applicants) on foster care pending adoption on the **5th** day of **December 2006**.
2. In the year 2009 investigations carried out by the **Child Welfare Society of Kenya (CWSK)** who approved the applicants as suitable parents to adopt revealed that the child lived in harsh conditions while under the care of the applicants. The female applicant was abusing her physically. On the **7th** day of **June 2009** the community rescued the child and handed her over to the **District Children's Officer** who in turn committed her to **Child Welfare Society of Kenya**. Subsequently, the child was placed in a temporary shelter at Nairobi.
3. After the withdrawal of the child, the applicants approached **Child Welfare Society of Kenya** seeking to be re-united with the child. The applicants were counselled.
Consequently the case was reviewed and on the **9th** day of **February 2012** the child was reunited with the applicants.
4. On the **10th** day of **July 2013** the applicants filed an application seeking to have **C M K** appointed as a guardian ad litem in respect of adoption of the child.
5. On the **13th** day of **August 2013** **C M K** was appointed as the guardian ad litem of the child and the **Director of Children Services** directed to prepare a report following a home study.

6. On the **26th September 2014** the **County Children Coordinator** visited the home jointly with the **Child Welfare Society of Kenya Makueni** Branch representatives. They found the child living in bad conditions. She was neglected and unattended. She was being abused physically and verbally. The child was withdrawn from the applicants.
7. The child was counselled. It was established that she suffered psychological, physical and emotional harm. It was a recommendation of **Child Welfare Society of Kenya** that the child needed psychological support in order to heal.
8. The guardian ad litem failed to carry out the responsibility bestowed upon her by the court. She did not safeguard the interests of the child pending determination of the case. She made no intervention when the child was being mistreated. She failed to appraise the court of the trauma the child was being subjected to.
9. The applicants herein were given a second opportunity of bonding with the child in order to provide her with a home. When given an opportunity to address the court after the matter was brought to the attention of the court, all the female applicant sought was to be compensated for what she had spent on the child for the duration she had taken care of her. It is therefore evident that she has no interest in the welfare of the child. This court cannot allow such parents to adopt the child. The child will continue staying at the temporary shelter until other prospective adoptive parents are identified.
10. In the premises I decline to grant orders sought. Accordingly, the application is dismissed.
11. It is so ordered.

DATED, SIGNED and DELIVERED at MACHAKOS this 25TH day of NOVEMBER, 2014.

L.N. MUTENDE

JUDGE