



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MILIMANI
ADOPTION CAUSE NO. 193 OF 2011 (OS)
AND
IN THE MATTER OF THE CHILDREN'S ACT (NO. 8 OF 2001)
AND
IN THE MATTER OF BABY B

JUDGEMENT

1. The applicants, J K K and Z M K are Kenyan citizens. They are a married couple. By their Originating Summons dated 19th October 2011 they seek to adopt Baby B.
2. B, the subject of these adoption proceedings, was born on 20th March 2005 in Vihiga District to known parents, being N K M and G A. These two were close blood relatives, and therefore the child was the product of an incestuous relationship. This made him a taboo child, who was not wanted in his community; hence a decision was made to give him up for adoption. His parents consented to this in writing, and he was admitted to the Mama Ngina Children's Home, where he was for three years. He was placed with the application for the mandatory bonding period on 13th May 2005.
3. The child was freed for adoption by the Child Welfare Society of Kenya by their certificate of 22nd February 2012.
4. To facilitate this adoption, the applicants have been assessed by the Child Welfare Society of Kenya, the guardian *ad litem*, T M N and the Director of Children Services. The three have compiled and filed their reports in court. The report by the Child Welfare Society of Kenya is dated 22nd February 2012, while that by the Director of Children Services is dated 7th November 2012. The report by the guardian *ad litem* is undated.
5. All these reports are favourable and recommend the proposed adoption. The applicants have demonstrated that they have the financial and emotional capability and capacity to take care of the child. The child appears to have bonded well with them and she considers them to be her parents.
6. In the opinion of this court it would be in the best interests of the child that he is adopted by the applicants. The applicants will be able to provide a home and a family for the child to grow up in and thereafter be a useful member of the family. Consequently, the applicants shall assume all parental rights and duties of the biological parents in respect of the adopted child; they shall treat the adopted child as if he was born to them. The applicants have 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 inherit their property. The applicant cannot give up the child owing to any subsequent unforeseen behaviour or other changes in the child.

7. I would have permitted the applicants, J K K and Z M K, to adopt Baby B, to be known hereafter as V M K, save that the applicants have not identified a legal guardian for the child in the event of anything untoward happening to them. This is an adoption from outside of the family. The child to be adopted is not related to the applicants by blood, and therefore there is no guarantee that their blood relatives would take up parental responsibilities over the child in the event of a terrible misfortune. The interests of the child have to be secured, and I believe the best way to do this would be by appointment of a legal guardian.
8. I therefore give the applicants thirty (30) days to identify and propose a legal guardian for the child in the event of any misfortune. Any person proposed as a legal guardian shall sign the requisite consents which shall be lodged in court in proper form.
9. It is so ordered.

DATED, SIGNED and DELIVERED at NAIROBI this 20th DAY OF December, 2013.

W.M. MUSYOKA

JUDGE