



1. D.M.K.

2. A.K.M..... APPLICANTS

## RULING

1. This is an application (by **originating summons dated 23<sup>rd</sup> February 2010**) for an **adoption order**. I have read all the affidavits and other materials filed in support of the summons.

2. The **Applicants** and the **Child** have been assessed and evaluated by a registered adoption society of Kenya. I have read the report of the adoption society, **Kenya Children's Home Adoption Society**, dated 24<sup>th</sup> May 2010. I have also read an undated report filed on 21<sup>st</sup> January 2011 by the **District Children's Officer, Kitui**. Both reports are favourable to the adoption order sought.

### THE CHILD

3. The **Child, J.M.** (aka **J. M. M.**) is male and was born on 1<sup>st</sup> October 2006. He was found abandoned at Nyamakima in Nairobi on 2<sup>nd</sup> October 2006 by a Good Samaritan. He was taken to Central Police Station. The Child was then admitted to **Cottolengo Centre** for care and protection on 21<sup>st</sup> March 2007, and thereafter to **Thomas Barnados Home** on 8<sup>th</sup> November 2007.

By a court order granted on 29<sup>th</sup> February 2008 in **Nairobi Children's Court Protection and Care Case No. 9 of 2008**, the Child was committed to the care and protection of the **Thomas Barnados House**.

4. On 14<sup>th</sup> May 2008 the Child was placed with the Applicants, and they have had him without interruption since then.

5. On 14<sup>th</sup> May 2008 the Child was declared free for adoption by the **Kenya Christian Homes Adoption Society** and a certificate to that effect issued on the same date.

### GUARDIAN AD LITEM

6. On 2<sup>nd</sup> November 2010 **F. M. M.** was appointed by the court to be guardian *ad litem* of the Child.

### THE APPLICANTS

7. The Applicants, **D.M.K.** and **A.K.M.** are husband and wife. They are both Kenyans and they reside at M[...] in Kitui District. Both are at least 21 years older than the Child. They are both of sound mind within the meaning of the **Mental Health Act, Cap 242**. The Applicants do not have any children of their own, but the wife had a child (now an adult) in a previous relationship. That child has given consent for the adoption.

8. The Applicants have never been convicted of a sexual or moral offence by a competent court of law. They are not homosexuals.

9. As already noted, the Child was abandoned. The Child's parents are unknown and nobody has ever come forward to claim him, either as a relative or guardian. Bearing in mind that the interests of the Child

are paramount, I hereby dispense with the consents required by **section 158(4)** of the **Children's Act, No 8 of 2001**.

**DECISION**

**10.** I have considered all matters placed before the court, including the statements of the Applicants filed with the application. Being guided by the principle that the welfare of the Child is paramount, I am satisfied that the Applicants have the ability to properly maintain and educate the Child. I am also satisfied that no payment or other reward has been given to or by the Applicants as consideration for the adoption order sought.

**11.** I am further satisfied that after the Child was found abandoned, all reasonable steps were made, albeit unsuccessfully, to locate the parents or guardian of the Child. Nobody came forward, as relative or guardian, to claim the Child.

**12.** I am thus persuaded that all requirements of the law for the adoption order sought have been met. I am also persuaded that the Applicants will provide a good and conducive home in which the Child will grow into responsible adulthood.

**13.** In the event I will grant the adoption order sought. **The Child's name shall be J.M.M. His date of birth is 1<sup>st</sup> October 2006, and he was born in Kenya.**

**14.** I hereby direct that the **Registrar-General** do make the necessary entry in the **Adoption Children Register**. This order shall be communicated to the Registrar-General in the prescribed form. Those will be the orders of the court.

**15.** The delay in preparation of this ruling is deeply regretted. It was caused by my poor state of health. But I thank God that I am much better now.

**DATED AT NAIROBI THIS 7<sup>TH</sup> DAY OF AUGUST 2012**

**H.P.G. WAWERU**

**JUDGE**

**COUNTERSIGNED AND DELIVERED AT MACHAKOS THIS 28<sup>TH</sup> DAY OF SEPTEMBER 2012**

**ASIKE-MAKHANDIA**

.....

**JUDGE**