



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

ADOPTION CAUSE NO. 4 OF 2010

IN THE MATTER OF: CHILDREN'S ACT NO. 8 OF 2001

AND

IN THE MATTER OF: AN APPLICATION BY D M M

AND

ADOPTION

V K M FOR AN ORDER OF

IN THE MATTER OF: ADOPTION OF BABY K K M (THE CHILD)

BETWEEN

DICKSON MWANZIA MALEVE

V K MAPPLICANTS

AND

JUDGEMENT

Before me is the application brought by way of Originating Summons in which **D M M** and **V K M** (hereinafter jointly referred to as the Applicants) seeks the following orders

- “1. THAT the Applicants be authorized to adopt BABY E S, the child.***
- 2. THAT the Registrar General be directed to make in the adopted children’s register, an entry to the effect that BABY E S is so adopted as per the particulars of the adopted child”***

An application made by **M M. N** to be appointed as Guardian ad litem in respect of this Adoption Cause was duly allowed by the court. Hearing of the application proceeded by way of Vive Voce evidence.

The Applicants are a couple who got married under Kamba Customary Law in 1998. Both are engaged in business in the city of Mombasa and they have made their home at CKH. Despite having been married for over ten (10) years the couple were not blessed with any children of their own and made the decision to adopt a child.

The child in question was born on 20th December 2003 but was abandoned at Kenyatta National Hospital a few days after birth. Thereafter the said child was placed in protective custody at the Little Angels Network where the Applicants met him. Both Applicants gave oral evidence in court and expressed their deep desire to adopt this child. The child is not a stranger to them as he has lived with them since the year 2004 a period of about six (6) years. The child does qualify for adoption in line with S. 156 of the Children Act which provides that Adoption proceedings may only be commenced in respect of a child who is at least six weeks old and has been declared free for adoption. The first prerequisite has been met as the child is now about 7 years old. With respect to the second prerequisite there is annexed to the Originating Summons a certificate issued by the Little Angels Network, which is a registered adoption agency, declaring the child free for adoption. This certificate is Serial No. [.....] and is dated 25th March 2009. I am satisfied that this Adoption Cause is properly before the court.

I have carefully considered the evidence given by the Applicants. I am satisfied that they are a genuine hardworking couple who desire to have a child. The couple both run businesses and have ample funds to provide for this child. Indeed they have been meeting all the child’s needs from 2004 to date including food, shelter, education etc. A Home Report prepared by the Provincial Children’s Department and filed in court on 20th July 2010 indicates that the couple own a spacious home in C and are able to provide the child with adequate and comfortable living conditions. The Applicants have assured the court that they are fully alive to all the rights and obligations arising from such an adoption and that they are both willing to receive this child and raise him as their very own. I have perused the report from the Adoption Agency as well as that from the Guardian ad litem all of which favour the adoption. However in making my final decision I will be guided by S. 4(2) of the Children Act which provides –

“(2) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child [my emphasis] shall be a primary consideration.”

The child in question was in court on the hearing date and I had the opportunity to see and interview him. From my observation he interacted well with the Applicants and identifies them as his parents. The child was clean happy and healthy, he is obviously well-cared for. Without a doubt it is in the best interests of any child to be placed in a family environment and to be raised by loving parents. I am convinced that this adoption will serve the best interests of this child. As such I do allow the present application in terms of prayers (1) and (2).

Dated and Delivered at Mombasa this 1st day of October 2010.

**M. ODERO
JUDGE**

Read in open court in the presence of:-
Mr. Tambaya holding brief for Mr. Muinde

**M. ODERO
JUDGE
1/10/2010**