REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

ADOPTION CAUSE NO. 4 OF 2015

IN THE MATTER OF BABY P

ON APPLICATION FOR AN ADOPTION ORDER

RULING

1. This application is brought by way of Originating Summons dated 10th March, 2015. The Applicant F M V through her advocates J M Mutua & Company Advocates seek the following orders:

> **1. THAT the requirements of Section 158(4) (a) of the Children's Act be waived as provided for by Section 159(I) of the Act.**
>
> **2. THAT F N M in the said Republic be appointed Guardian ad Litem in this case.**
>
> **3. THAT the Applicant be authorized to adopt baby Prince and the baby be known as S W.**
>
> **4. THAT J K W be appointed Legal Guardian of the child.**
>
> **5. THAT the Director of Children's Department to investigate the case and file a report**.
>
> **6. THAT it is directed that the Registrar-General shall make in the Children's Register an entry recording the adoption in accordance with the particulars set out in the Schedule attached hereto.**

2. In the preliminary stage during the appointment of the Guardian ad Litem, prayers 2 and 5 were granted by the court.

3. The Applicant **F M V** is a resident of Tala in Machakos County. She was married to her husband **Mr S W M** with whom she has a child **J K W.** She was in gainful employment with [Particulars withheld] from 1982 to 2000 when the company was dissolved and she decided to venture into business. She bought several plots and now runs a general shop at [Particulars withheld] Center where she sells foodstuffs and hardware. She is in a polygamous marriage and her challenge is her inability to parent another child and **hence her** desire to adopt **Baby P**.

4. The daughter of the Applicant, **J K W** has no objection to the Applicant's desire to adopt baby **P** as confirmed in her affidavit dated 10th March, 2015 and is willing to accept baby **P** as a brother. **J K W** swore an affidavit to confirm adoption consent dated 4th April 2017 indicating that she has no objection to the Applicant adopting Baby P.

5. Baby **P** was presumably born on 22nd November, 2008 and was abandoned by the mother at Thika district hospital's post natal ward on 26th November, 2008. The minor has no health challenge and has been under the care and control of the Happy Life Childrens Home after committal pursuant to Protection and Care number 96 of 2008 issued by the Resident Magistrates Court Thika.

6. On the committee sitting of 16th October 2012 Baby Prince was declared free for adoption and was placed in the care of the applicant from 12th May 2013 after a care and control agreement was executed between the applicant and the Adoption Society.

7. On 23rd September 2015 the Court directed the Director of Children Services Kangundo to conduct investigations as to the suitability of the Applicant to adopt **Baby P** and submit a report and findings to Court. The minor was presumed a Kenyan citizen and the requirement for a freeing certificate was complied with.

8. A Personnel in the County Children's office conducted a Social Inquiry on the Applicant by visiting and interrogating her at her home on 24th November, 2015. It was observed that the Applicant has taken care of baby **P** since 2013, thus has demonstrated ability to maintain baby **P.** On 19th January, 2016 Ms Susan Ouma, the Sub County Children's Officer, Kangundo/Matungulu filed a favourable report as to the

suitability of the Applicant to adopt baby **P.**

9. On 1st February, 2016, the Applicant F M V through her advocates J M Mutua & Company filed an amended Originating Summons seeking the following changes.

a. **THAT F N M instead of J K W in the said Republic be appointed Guardian ad Litem in this case.**

b. **THAT J K W instead of S W M be appointed Legal Guardian of the child**

10. On 7th March, 2017, this court granted prayer 2 in the originating summons and directed the appointed guardian ad litem to file and serve her report within 14 days and J K W to file and serve her affidavit and consent within 14 days

11. **J K W** and **F N M** complied and filed their affidavits on 4th April, 2017 and **J K W** filed her report on 10th April, 2018.

12. On the said 10th April, 2018 Janet and the applicant appeared before me to confirm the contents of their affidavits. On 31st July, 2018 P N, the Adoption and Program Officer from the Kenya Child Adoption Society appeared before me to confirm that his report dated 12th March 2015 and filed in court on 14th May, 2015 recommends the applicant to adopt Baby P.

13. Upon reading the above report and satisfying myself that all the legal requirements have been adhered, this court is satisfied that the Applicant is a suitable person to adopt Baby **P** and that she is financially stable and has the means to provide and care for him. The baby has bonded well with the applicant as confirmed by the several reports.

For the above reasons, the Court orders as follows;

1. THAT the Applicant F M V be and is hereby authorized to adopt Baby P to be known as S W.

2. THAT J K W be and is hereby appointed Legal Guardian of the minor.

3. THAT the Registrar-General do make in the Adopted Children Register an entry recording the adoption in accordance with the particulars set out in the Schedule to this order.

Signed, Dated and delivered at Machakos this 7th day of November, 2018.

D.K. KEMEI

JUDGE