



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

ADOPTION CAUSE NO. 25 OF 2015

IN THE MATTER OF BABY B ON APPLICATION FOR AN ADOPTION ORDER

M K I1ST APPLICANT

G M M.....2ND APPLICANT

JUDGMENT OF THE COURT

1. The Originating Summons before the court is dated 12th November, 2015. It prays for the following orders;

- a. That the requirement of Section 158 (4) (a) of the Children's Act be waived as provided for by Section 159 (I) of the Act.
- b. That **particulars withheld** in the said republic be appointed Guardian Ad litem in this case.
- c. That the applicants be authorized to adopt baby **B** and the baby be known as **B V M**.
- d. That **J M M** be appointed the legal guardian of the child.
- e. That the Director of Children's Department do investigate the case and file a report.
- f. And it is directed that the Registrar General shall make in the adopted Children's register an entry recording the adoption in accordance with the particulars set out in the schedule attached hereto;

2. The Originating Summons was heard in court on 27th October, 2016. **PW1 – Josphat Musyimi Kiamba** testified that he is a Pastor of New Apostolic Church in Makueni County. He has known **M and G**, the applicants herein, for over twenty five (25) years. The applicants have no children of their own and that is why they want to adopt the child. PW1 has known the child for two (2) years. PW1 understands his role as a guardian *ad litem*, to ensure that the child is well taken care of, fed, clothed, educated and when ill treated, to report such to relevant authorities. The PW1 has taken this responsibility freely without any pay or pressure.

3. **PW2- Justus Munyaka Muinde** testified that he is an auctioneer in Machakos town. He has know the applicants in this case for over twenty (20) years. He has known the child for about three (3) years. PW2 agreed to be a legal guardian of the child. PW2 understood his duty being to take care of the child in the absence of the parents. He has freely accepted the responsibility.

4. **PW3 – Rasto Omolo** testified that he is the Children Officer – Makueni District. He was directed by this court on 18th April, 2016 to investigate the applicants and file a report herein. He did that and filed a

report on **26th October, 2016**, which he wished to adopt as his evidence herein. PW3 recommended that the two applicants are suitable to adopt baby Benson. The child bonded well with the applicants. The parents are fit to adopt the child.

5. **PW4- Pauline Mumo Kitema** testified that she is a social worker with Kenya Children’s Home Adoption Society. She investigated the applicants herein and filed a report. The applicants are suitable to adopt the child. The child was declared free for adoption on 16th July, 2014. The said society filed a report in which they recommend that the applicant’s be allowed to adopt the child. The said report is dated **27th October, 2008**.

Determination

6. There is a report dated 26th October, 2016 supporting the Originating Summons. It is filed by the Children’s Officer, Makueni. I have also seen a report dated 16th July, 2014 by the Kenya Children’s Home recommending the adoption. Further, the said home has given a Certificate of Declaring the child free for adoption. It is dated 10th September, 2014. I have noted the evidence of the guardian *ad litem* and that of **PW1 – Pastor Josphat Musyimi Kiamba** and of **PW2 – Justus Munyaka Muinde**, who provided good testimony about the parents.

7. I am satisfied that the parents are able and willing to adopt the child and that they will ably provide for the child. The child will also have an opportunity to grow in a caring and loving home. It is noted that the minor was found abandoned, and the willingness of the applicants to adopt him is an act of love and magnanimity which this court hereby recognizes by allowing this Originating Summons in the following terms;

- a. That the requirement of Section 158 (4) (a) of the Children’s Act be and is hereby waived as provided for by Section 159 (I) of the Act.
- b. That **J M K** be and is hereby appointed Guardian Ad litem in this case.
- c. That the applicants be authorized to adopt baby **B** and the baby be known as **B V M**.
- d. That **J M M** be and is hereby appointed the legal guardian of the child.
- e. That the Director of Children’s Department do investigate the case and file a report.
- f. And it is directed that the Registrar General shall make in the adopted Children’s register an entry recording the adoption in accordance with the particulars set out pursuant to this judgment.

That is the judgment of the court.

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E.K.O. OGOLA

JUDGE

DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 14TH DAY OF FEBRUARY, 2017

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DAVID KEMEI

JUDGE

In the presence of:

Muia – for Applicant