



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

ADOPTION CAUSE NO 19 OF 2013

IN THE MATTER OF THE ADOPTION OF E E ALIAS BABY D (A CHILD)

AND ON THE APPLICATION FOR AN ADOPTION ORDER

BY

B K K.....1ST APPLICANT

D M2ND APPLICANT

JUDGMENT

The 1st and 2nd Applicants are a male and female adult respectively, and are both Kenyan nationals aged 39 and 34 years respectively and of sound mind. They Applicants are married to each other, and are resident in Machakos County. They solemnized their marriage in 2002 under the Kamba customary law, and they seek to adopt a male child known as E E alias Baby D, (hereinafter referred to as Baby D). The Applicants have moved the Court in this regard by way of an Originating Summons dated 10th July 2013 as amended on 29th November 2016.

The Applicants sought the following orders in the said Amended Originating Summons:

- i. That the Applicants be authorized to adopt E E alias Baby D.
- ii. That the child be declared a Kenyan citizen.
- iii. That upon making the adoption order the said child be known as D M K, and the Registrar General do make the appropriate entry in the Adopted Children's Register.
- iv. That the Court be pleased to discharge D M of his duties as the Guardian ad Litem over the D M K.
- v. That the Court be pleased to appoint F M M as the legal guardian over the minor D M K.

The Applicants also filed an application by way of a Chamber Summons dated 10th July 2013, whereby they sought orders that D M M be appointed *guardian ad litem* in respect of the adoption of child Baby D, and that the Director of Children's Department do prepare a home study report for submission to the Court. The said orders were granted by this Court (Mutende J.) on 14th August 2013, after an examination by the Court of the proposed guardian *ad litem*.

This Court at a hearing held on 29th October 2015 adopted a social inquiry and declaration report both dated 17th February 2014, and filed in Court on 21st September 2015 by the Child Welfare Society of Kenya Adoption Society as their evidence in this adoption cause. The Court at the same hearing also admitted as evidence a report dated 12th July 2014 by Rasto Omolo, the District Children Officer, Makueni District, and which was filed in Court on 10th October 2014.

A further hearing was held on 26th October 2016, when the guardian *ad litem* presented his report, which report dated and filed in Court on 29th June 2016 was adopted by the Court as his evidence. Lastly, the Court examined the proposed legal guardian on 29th November 2016 before reserving this adoption cause for judgment. The Applicants submitted that they would wholly rely on the pleadings they filed in Court.

Baby D is a male child who was born on 28th December 2010 at Kenyatta National Hospital to E E, who had earlier visited the Child Welfare Society of Kenya with the intention of offering the child for adoption immediately after delivery. After the child's delivery at Kenyatta National Hospital, Nairobi, the child was referred to Child Welfare Society of Kenya who placed the child at Hope House Babies Home on 21st January 2011 for care and protection. Later, on 12th of April 2011, and after the lapse of six weeks as stipulated under the Children's Act of 2001, the biological mother willingly gave her final consent to offer the child for adoption to the Child Welfare Society of Kenya. The child was thereafter committed to Hope House Babies Home under Care and Protection order No. 177 of 2011 on 13th June 2011 .

Baby D was placed into, and has been in the care and possession of the Applicants since 14th June 2011, and the minor was declared free for adoption by the Child Welfare Society of Kenya on 30th December 2013 by way of freeing certificate number [particulars withheld]. The reports filed in Court by the Guardian *ad litem*, the Child Welfare Society of Kenya and Makueni District Children's Officer confirm that the Applicants have bonded well with Baby D, and that the said minor is happy, healthy, well-adjusted and well taken care of. All of them recommended that that adoption would be in the best interests of Baby D.

Having evaluated the facts of this adoption application, I note that it is seeking a local adoption and that the Applicants are joint married applicants who are at least 25 years of age and under the age of 65 years, and who wish to adopt a male child. They have therefore met the requirement set under Section 158 (1), (2) and (3) of the Children Act. In addition the written consent required to be given under section 158(4) (a) of the Children Act by the parent of the child was also availed by the Child Welfare Society of Kenya in their social inquiry report that was filed in Court on 21st September 2015.

This Court is also satisfied that the Applicants are qualified and able to take care of the child. I observed the Applicants with Baby D in court, and it was evident that they had bonded well, and that the said child is well taken care of. I have therefore formed the opinion that it would be in the best interest of Baby D to be adopted by the Applicants.

Consequently, the Applicants shall assume all parental rights and duties of the biological parents in respect of the adopted child, and shall treat the adopted child as if he was born to them. The Applicants have also 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 maintenance and to inherit their property. The adoption order once made is absolute and irreversible, and the Applicants cannot give up the child owing to any subsequent unforeseen condition or other changes in the child.

I accordingly allow the application for adoption and order as follows:

1. The Applicants, B K K and D M K, are hereby allowed to adopt Baby D .
2. The child shall henceforth be known as D M K.
3. The Registrar General is hereby directed to make the appropriate entry of D M K in the Adopted

Children's Register.

4. As D M K was born in Kenya, he is hereby declared a Kenyan citizen by birth.

5. F M M shall be the legal guardian of the child should such eventuality arise.

6. I hereby forthwith discharge the guardian *ad litem*, D M M, of his duties.

It is so ordered.

Dated, signed and delivered in open court at Machakos this 14th day of February 2017.

P. NYAMWEYA

JUDGE