



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KAJIADO**  
**ADOPTION CAUSE NO. 1 OF 2017**  
**IN THE MATTER OF THE CHILDREN ACT**

**AND**

**IN THE MATTER OF AN APPLICATION FOR ADOPTION OF BABY S N BY F K M AND E M M M**

**RULING**

The applicants herein identified as F K M and E M M M moved this court by way of originating summons seeking to adopt a minor S N under the provisions of the Children's Act No. 8 of 2001. The applicants who deposed that they have approached this court as husband and wife aged 35 years each respectively. The child who is a subject of these proceedings was said to be aged 5 years old.

In the averments the applicants deposed that they have lived with the child minor S N prior to this application who has therefore familiarized with the home environment located at Ngong. It was further the applicants disposition that besides seeking to adopt child S N During the subsistence of their marriage they have been blessed with one son of their own namely S M K aged 9 years.

As at the commencement of the adoption proceedings an interlocutory chamber summons dated 1<sup>st</sup> February 2017 pursuant to section 160 and 163 of the Children's Act was filed and granted to enable the appointment of the Guardian Ad Litem and the Director of Children's Services Kajiado County and the Chief Administrator, Kenya Children's Home conduct suitability investigations of the applicants to adopt child S N. The reports of the Guardian Ad Litem, the Director of Children Services and Kenya Children's Home an adoption agency were filed in compliance with the constitutional and statutory requirements. The affidavit of fitness on the Guardian Ad Litem was also filed in court by P.L.O. who deposed to have known the Guardian Ad Litem for more than 5 years.

The Church where the applicants worship issued a letter of reference as to their profile as members of the church. The reference letter also alluded to the commitment of the applicants as a couple as evidenced by the solemnised marriage on 11<sup>th</sup> December, 2014 at [particulars withheld] Church. In the church the applicants are well known as hardworking and financially stable who at the time were blessed with one child. The applicants have also deposed in their affidavit dated 1<sup>st</sup> February 2017 that they are fit and financially stable and capable of supporting an extra member of the family in discharging the evidential burden on these issues. The applicants exhibited copy of payslip, copies of bank statements and copy of title of land located at Nanyuki. The applicants have confirmed and understood the implications of this adoption both under the law and the new parental responsibility. The decision to adopt child S N as supported by the applicants have demonstrated that they are of good conduct, they are both physical and mentally fit to raise up child S N who will be placed under their custody and care by an order of this court.

I have noted that prior to this adoption cause the child S N was under the care and support of Kandesh-Ber-Nea Children's Home based at Nakuru. The Kenya Children's Home on adoption agency carried out due diligence, social inquiries reports, case summary of the child and the circumstances upon which they took over the child under their care and protection. There is evidence to the effect of the certificate of declaring the child free for adoption by the Kenya Children's Home.

Section 162 (a) of the Children's Act provides that any necessary consent be obtained by an applicant before an adoption in his or their favour can be made by the court. I am therefore satisfied that given the special circumstances of the child S N in this adoption cause the legal requirements of section 162 (c) of the Children Act have been fulfilled by the applicants.

What has come out clearly the mother of the Child S N abandoned him at his point of need and her whereabouts since 2012 are unknown. The action by the mother on the child was a clear violation of his rights under the Constitution and the Children's Act. This court presumeth that the biological mother renounced all rights over the child.

From the evidence on record the only legal hurdle left for this court to answer is whether the applicants have met the threshold under section 4(2) of the Children's Act on the best interest of the child. The best interest of the child can be hard to define. I have perused the international instruments on the rights of the child i.e. UN Conservation on Children Rights, the Constitution of Kenya and the Children's Act No. 8 of 2001. There is no standard definition of the best interest of the child.

The panoramic view of the judicial precedents demonstrates a deliberation of the legal instruments and courts not to attempt to come up with a standard definition of the best interest of the child. In the Kenya Law the best interest of the child can be traced to the Constitution 2010 Article 53(1) and (2) and the Children's Act of 2010. In this adoption case i urge the applicants to familiarize themselves with the provisions of the constitution which espouses the fundamental rights of every citizen in this country. The fundamental rights also apply to child S N whom they seek to adopt as a member of the family. The Children's Act also breaks down the child rights and principles on the best interest of the child. It is also a legal tool for the applicants to obtain as a reference point as they take on the heavy responsibility of adopting child S N. In other words the child's best interest like child S N is intended to ensure both the full and effective realization of all rights secured by the Constitution, Children's Act of Kenya, Convention on the Rights of the Child and the child's overall development.

Among the key elements the applicants are obligated to ponder and work towards fulfilling to the child S N include taking into account, the child views, the child identity, preservation of stable, secure, safe family environment, maintenance of family ties and relations, the child's care, protection, the child's right to health, education etc. The test is well exhaustive until the child attains the age of maturity.

Concerning the present application on the suitability of the applicants to adopt the child, i have given due consideration to the averments, annexures and all the relevant material in their affidavits and the reports from the adoption agency and the Director of Children's Services Kenya County. This court balancing these elements identified in support of the applicants i am satisfied that adoption of S N shall be in his best interest.

The application succeeds on the merits.

As a result i therefore make the following orders:

- 1. That the applicants F K M and E M M M be allowed to adopt the child S N who shall be henceforth be called P M K.**
- 2. That his birth date shall be 15/3/2012.**
- 3. That by virtue of this adoption cause the registrar is directed to make appropriate entries in the adoption register.**

**4. That upon execution of this adoption order this court hereby appoints C M K as the legal guardian for the children P M K in any event.**

**5. I hereby discharge the guardian ad litem.**

**6. I make no orders as to costs.**

**Dated, delivered and signed in open court at Kajiado on 4<sup>th</sup> day of May, 2017.**

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**R. NYAKUNDI**

**JUDGE**

**Representation:**

Applicants

Ms. Ndegwa Counsel for the Applicants

Mr. Mateli Court Assistant