



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**(FAMILY DIVISION)**

**ADOPTION CAUSE NO. 42 OF 2015**

**IN THE MATTER OF AN APPLICATION FOR ADOPTION OF BABY I H**

**RULING**

1. On 25<sup>th</sup> November 2016 I delivered a judgment herein where I dismissed the adoption cause herein on grounds that the applicants sought to adopt a child called I H, yet the police records, of the station where the alleged child was surrendered after abandonment, refer to a child called S and not I, yet the pleadings did not at all make any reference to S.

2. The applicants have now brought an application seeking that I review the said judgement. The application is founded on an affidavit sworn by the advocate for the applicants. The said advocate describes herself variously as the “applicant” and “applicants”. It is a fact that the advocate is not the applicant in this cause. She cannot therefore swear an affidavit purporting to be one. She can only swear an affidavit on behalf of the applicants and with their authority. In any event the facts that she deposes are not within her own personal knowledge.

3. Counsel appearing in these matters ought to take them seriously. The pleadings, as they stand, cannot possibly form basis for grant of the orders sought. The whole matter of the child in question started with his abandonment. Upon being found abandoned, the child was taken to the police, who received him as S. The pleadings herein cannot possibly be silent about S, otherwise an impression would be created that Baby I and S were two totally different persons. Without the police link the issue of the child having been abandoned would be lost, and it would be unclear that the child S who reported to the police as abandoned is the same person as I H the subject of these proceedings.

4. There is no error on the face of the court record, neither has the purported applicant discovered any new evidence. There is no basis whatsoever for review. The error is on the part of the pleadings of the applicants. The error cannot be cured by review, rather the applicants ought to have sought to amend their pleadings. The applicants ought to have amended their pleadings before they approached the court for the hearing of the matter. Ideally amendment of pleadings cannot be sought after judgement.

5. There is no merit at all in the application before me. It ought to be dismissed, and I hereby dismiss the same.

6. I note, however, that the matter touches on the welfare of a child. Purely on that account, I shall set aside the judgement of 25<sup>th</sup> November 2016. The applicants shall move the court for the amendment of their pleadings to conform with the documents that they propose to place before the court to prove their case. The matter shall thereafter be heard afresh.

**DATED, SIGNED and DELIVERED at NAIROBI this 14<sup>TH</sup> DAY OF JULY, 2017.**

**W. MUSYOKA**

**JUDGE**