



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MACHAKOS**  
**ADOPTION CAUSE NO 2 OF 2015**  
**IN THE MATTER OF BABY M M**

**J K M.....1<sup>ST</sup> APPLICANT**

**A M K.....2<sup>ND</sup> APPLICANT**

**JUDGMENT**

The 1<sup>st</sup> and 2<sup>nd</sup> Applicants are a male and female adult respectively, and are both Kenyan nationals aged 36 and 32 years respectively and of sound mind. They have been married to each other since 17<sup>th</sup> June 2006 when they solemnized their marriage under the Marriage Act, and are resident in Machakos Town within Machakos County. The Applicants seek to adopt a male child known as Baby M M, and have moved the Court in this regard by way of an Originating Summons dated 30<sup>th</sup> January 2015, brought under sections 154, 156, 157, 158, 160, 162 and 163 of the Children Act.

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

- i. That the requirements of section 158(4)(a) of the Children's Act be waived as provided for in section 159(1) of the Act
- ii. That G K be appointed Guardian *ad litem* in this case.
- iii. That the Applicants be authorised to adopt baby M M and the baby be known as M M.
- iv. That E K M be appointed the legal guardian of the child.
- v. That the Director of Children's Department do investigate the case and file a report.
- vi. That the Registrar General makes in the adopted Children's register an entry recording the adoption

The proposed guardian *ad litem* and legal guardian also filed affidavits in Court giving their consent to their respective appointments, and confirmed their acceptance and understanding of their respective responsibilities, after they were examined by the Court during a hearing held on 2<sup>nd</sup> December 2015.

Prayer (ii) of the said Originating Summons was granted during the hearing held on 2<sup>nd</sup> December 2015, as was prayer (v). The guardian *ad litem*'s presented his report dated 18<sup>th</sup> July 2016 at a hearing held on

the same date. The Court at a hearing held on 20<sup>th</sup> September 2016 admitted as evidence a declaration report by Kenya Children's Homes Adoption Society Report dated 18<sup>th</sup> June 2015 and filed in Court on 6<sup>th</sup> July 2015. The report dated 15<sup>th</sup> February 2016 and filed in Court on 16<sup>th</sup> February 2016 by J K K, the Machakos sub-County Children Officer, were also presented and adopted by the Court as his evidence during the said hearing.

Baby M M is a male child who was left in the custody of a good samaritan by his mother on 22<sup>nd</sup> October 2012 within Kandara Township. The mother did not return, and the abandonment of the child was reported to the Kandara police station. A letter from the police station dated 24<sup>th</sup> October 2012 to the Kandara Children's Home confirmed the report of abandonment. The infant was subsequently placed under the care and protection of Kandara Children's Home, and a court order formalizing his committal to the said children's home was issued on 18<sup>th</sup> March 2014 by the by the Kandara Children's Court. The Kandara Police Station confirmed in a letter dated 20<sup>th</sup> September 2013 that their efforts to trace the parents and relatives of the child had been futile.

The Applicants approached the Kenya Children's Home Adoption Society on 21<sup>st</sup> May 2014 for ratification for placement with a child with a view to eventual adoption. The minor was declared free for adoption by the Kenya Children's Home Adoption Society on 16<sup>th</sup> July 2014 by way of freeing certificate number [particulars withheld]. The Applicants were approved to be suitable adoptive parents and placed with Baby M M on 8<sup>th</sup> September 2014.

The Applicants have one biological daughter aged 8 years old, and the 2<sup>nd</sup> Applicant is unable to have another biological child having undergone several caesarian operations, and advised that she cannot undergo any more operations and hence cannot have another child. Two of the Applicants' children died in infancy, and their love for children has led to their desire to adopt Baby M M.

The reports filed in Court confirm that the Applicants are mature and responsible, and have bonded well with Baby M M, and all of them recommend the adoption. 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, since Baby M M was abandoned and no one has claimed him so far, the consent required to be given under section 158(4) of the Children Act can be dispensed with by this Court pursuant to the provisions of section 159(1)(a)(i) of the Children Act.

This court is also satisfied that the Applicants are qualified and able to take care of the child. The home visits by the guardian *ad litem*, the Adoption Society and the Children Officer established that the Applicants have bonded with Baby M M, and have the financial capability to provide for the upkeep and education of the child. The reports filed in Court pursuant to these visits also do recommend the Applicants' adoption of Baby M M. Lastly, I observed the Applicants with Baby M M in court, and it was evident that they had bonded well and that the said child is well taken care of.

This Court therefore forms the opinion that it would be in the best interest of Baby M M 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, J K M and A M K are hereby allowed to adopt Baby M M.

2. The child shall henceforth be known as M M.
3. E K M shall be the legal guardian of the child should such eventuality arise.
4. As the child was found abandoned in Kenya, he is hereby declared a Kenyan citizen by birth.
5. The Registrar-General is directed to enter this adoption order in the adoption register.
6. I hereby forthwith discharge the guardian *ad litem*.

It is so ordered.

Dated, signed and delivered in open court at Machakos this 15<sup>th</sup> day of November 2016.

**P. NYAMWEYA**

**JUDGE**