



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS
ADOPTION CAUSE NO 4 OF 2014
IN THE MATTER OF Baby S
AND ON THE APPLICATION FOR AN ADOPTION ORDER BY
B M K.....1ST APPLICANT
D M M.....2ND APPLICANT

JUDGMENT

The 1st and 2nd Applicants are a male and female adult respectively, and are both Kenyan nationals aged 41 and 36 years respectively and of sound mind. They Applicants are married to each other, and are resident in Mlolongo within Machakos County. They solemnized their marriage on 29th November 2003 under the African Christian Marriage and Divorce Act. They seek to adopt a male child known as Baby S, and have moved the Court in this regard by way of an Originating Summons dated 13th January 2014 brought under sections 154, 156, 157, 158, 159, 160, 163, 164 and 170 of the Children Act.

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

- i. That M M be appointed Guardian *ad litem* in this case.
- ii. That the Director of Children's Department investigates the Applicants' fitness to adopt and file a report.
- iii. That the Applicants be authorised to adopt Baby S to be known as S N M.
- iv. That R KK be appointed the legal guardian of the child.
- v. That the Court be pleased to make any further orders it deems necessary

Prayers (i) and (ii) of the said Originating Summons was granted by this Court (Jaden J.) during a hearing held on 30th September 2015, after an examination by the Court of the guardian *ad litem*. The Court at a hearing held on 20th July 2016 also admitted as evidence the guardian *ad litem*'s report dated 15th July 2016 and filed in Court on 20th July 2016, and a declaration report by Kenya Children's Homes Adoption Society Report dated 7th May 2014 and filed in Court on 12th May 2014.

The Applicants also relied on a report dated 13th July 2016 and filed in Court on 14th July 2016 by Mercy

Muli, the Sub-County Children's Officer at Athi River, and an affidavit sworn on 13th January 2014 by the proposed legal guardian, in which he gave his consent to take care of Baby S in the event of the death of incapacity of the Applicants.

Baby S is a male child who was found abandoned in Ololuuu area by an unknown person on 14th March 2012, and a report thereof made to the Ngong Police Station. Baby S was then admitted at Mahali Pa Maisha on 14th March 2012 by the Children's Court at Kajiado on 16th March 2012. The Ngong Police Station confirmed in a letter dated 14th September 2012 that they had not been able to trace the parents and next of kin of the child.

The Applicants approached the Kenya Children's Home Adoption Society on 30th March 2012 for ratification for placement with a child with a view to eventual adoption. The Applicants were approved to be suitable adoptive parents and placed with Baby V on 26th September 2011. The Applicants are unable to have a biological child of her own due to medical reasons, hence their desire to adopt Baby S. The minor was declared free for adoption by the Kenya Children's Home Adoption Society on 26th September 2011 by way of freeing certificate number 0874.

The reports filed in Court by the Guardian *ad litem*, the Kenya Children's Homes Adoption Society and Athi River Sub- County Children's Officer confirm that the Applicants have bonded well with Baby S, and that Baby S is happy, healthy and well taken care of. All of them recommended that that adoption would be in the best interests of Baby S.

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 S 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. I observed the Applicants with Baby S 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 S 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 M K and D M M are hereby allowed to adopt Baby S.
2. The child shall henceforth be known as S N M.
3. R K K 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 15th day of November 2016.

P. NYAMWEYA

JUDGE