



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

(FAMILY DIVISION)

ADOPTION CAUSE NUMBER 6 OF 2019

IN THE MATTER OF AN APPLICATION OF ADOPTION OF (MINOR) MMA a.k.a. AH a.k.a ANN

PNN.....1ST APPLICANT

MC.....2ND APPLICANT

R U L I N G

1. On 23rd April 2020 I gave the following directions;

1. A guardian ad litem for the child must be appointed to file the requisite report.
2. The Adoption Society to clarify whether there was consent of the mother or was the child abandoned by the mother?
3. The issue of change of names on admission to the Baby Centre from MMA to AH be explained.
4. The Adoption Society to clarify when the Adoption Process started.
5. The court be supplied with the Children Officer's Report that was relied on by the Children's Court to admit the baby to AGC Baby Centre?
6. The Adoption Agency has thirty (30) days within which to supply this information to enable this court to make the requisite orders.
7. In the meantime, the child to remain in the custody of the proposed adoptive parents under the regular supervision of the Children Officer who will file a report thereof every month until a guardian ad litem is appointed.
8. The Deputy Registrar to serve the order 7 above on the County Co-Coordinator Children Services Nakuru for compliance.
9. Mention on 28th May 2020 for compliance and further orders.

2. On 2nd October 2020, the applicants through their counsel Muchiri Gatheca & Company Advocates filed an Amended Summons, seeking the appointment of IWN as the new *guardian ad litem*.

3. At paragraph 3 of the Amended Summons it states;

"3. THAT the consent of the biological parent was issued as per the children (Adoption) Regulations 2005 Section 17 (a) and (b) as annexed in the Affidavit."

4. At paragraph 5 it says

"5. THAT the child be presumed to be a Kenyan Citizen having been found abandoned at a tender age within the Republic of Kenya and no known whereabouts of the parents."

5. Regarding directions 1 & 2 it can be seen from the amended summons the applicants are saying two things about the child which are

mutually exclusive. Either the mother of the child gave her consent or the child was abandoned by the mother.

6. It is noteworthy that this abandonment issue is repeated in these pleadings clouding the manner in which the Adoption Agency says the child was freed for adoption. Every actor in this adoption needs to be clear on how the child ended up free for adoption.

7. Though a new guardian ad litem was appointed it is evident that the Guardian ad Litem IWN did not conduct any investigations as required, but copy pasted the report by MW and IM filed on 18th June 2020. The purported report is word for word that one of the previous guardian ad litem. The only difference is that hers is dated 23rd September 2020. I am gravely concerned by this failure, on the part of this guardian ad litem and I have to question her suitability and whether she understands the seriousness of her undertaking.

8. Regarding directions 3, 4 & 5 The Adoption Agency filed a Supplementary report on 16th June 2020. No good explanation is given for changing the child's name. If, for instance, as happens in some situations a child is lost, and on admission to the children's home the name is changed, and the child goes by a different name, finding that child can be difficult because the original name will only be in records as stated by the Agency, and it will not be the name the child is using or is being called by. It leads to the creation of several aliases for a child and may be a contributing factor to the difficulty in finding children who get lost.

9. While the giving of a new name may be in good faith, it is one way in which a lost child's identity could easily be hidden in the guise of a tradition that may not be in the best interests of the child. It is a tradition that is bound to create confusion especially where the relatives of a lost or abandoned child may be looking for the child. We are living in times rife with child trafficking. Such an act of giving the child a complete new name can amount to concealing the true identity of the child. As I have said, this may be done in good faith, but it may not be in the best interests of the child.

10. It is also evident from the record that the Children Officer's Report that committed the child to AGC Baby Centre has not been availed. In the Supplementary Report the Adoption Society indicated that their social worker was to obtain the same, but since the filing of their report on 18th June 2020 the report has not been filed.

11. With regard to **direction 7** there is no current report from the Director of Children Services. The report on record is for 2019.

12. In view of the foregoing the matter is still not ready for the final orders as these issues remain not dealt with.

13. Counsel, the *guardian ad litem*, Director of Children Services, and the Adoption Agency will each have thirty (30) days to comply.

14. Mention on 30th July, 2021 before the Deputy Registrar for compliance.

DATED, SIGNED and DELIVERED ZOOM this 29th day of June 2021.

MUMBUA T. MATHEKA

JUDGE

In the presence of:-

Court Assistant Edna

Muchiri Gatheca & Co. Advocates

muchirigatheca2016@gmail.com