



**REPUBLIC OF KENYA**

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

**ADOPTION CAUSE NO. 2 OF 2019**

**IN THE MATTER OF THE CHILDREN'S ACT 2001**

**AND**

**IN THE MATTER OF AN APPLICATION BY DKT AND SWK FOR AN ORDER OF ADOPTION**

**IN THE MATTER OF ADOPTION OF BABY LK**

**JUDGMENT**

1. By Originating Summons dated 29<sup>th</sup> March, 2019, and expressed to be premised pursuant to Sections 154, 156(1), 157(1), 158(1) A, 159(1) A, (C), (4) (6) (7) 160(1), (4) 163, 164 (4) & 170 of the Children's Act and Section 22 of the Interpretation and General Provisions Act and all enabling provisions of law. In it, the applicants seek:

- a) Spent
- b) That **BNK & CK** be appointed as the Guardians of **Baby LK**.
- c) That **DKT & SW** be authorized to adopt **Baby LK**.
- d) Spent
- e) That the consent of the biological mother has been obtained. The father is unknown.
- f) That the child be henceforth called **Baby LK**.
- g) That the Registrar General do make appropriate entries in the Adopted Children's Register in respect of the minor herein and do issue a Certificate of Adoption and Birth thereto.

2. The applicants who are Kenyan citizens by birth were born in 1958 and 1966 respectively. The 1<sup>st</sup> applicant is a Senior Pastor of Deliverance Church at [particulars withheld] in Gatundu South, while the 2<sup>nd</sup> applicant is a farmer and a member of [particulars withheld] Self Help Group, in Gatundu. The two solemnized their marriage in 1986 and have no child of their own. They received the baby into their custody in 2015 and have continuously taken care of her ever since.

3. After birth, the baby and her biological mother were living at Tumaini Centre where the mother underwent counseling then decided to go back to school and the baby was referred to New Start Centre for care and protection through the District Children's office, Imenti North as per the placement letter dated 10/08/2011. The baby was subsequently committed to the said New Start Centre on 19/08/2011 vide care and protection case number XX of 2011.

4. The court on 15/7/2020 directed that the adoptive parents arrange a meeting between the baby and her biological mother, and the same was done and a report was accordingly filed on 14/9/2020 in that regard. Following the baby's biological mother's and her maternal great grandmother's consent to give her up for adoption, she was declared free for adoption by Little Angels Network on 27/03/2015 and a certificate issued. The baby was placed with the applicants in 2015 for foster care pending adoption.

5. The Little Angels Network filed its pre-placement report on 18/5/2021 recommending the applicants herein for adoption of a baby of their preferred age.

6. Having carefully looked at the application herein, affidavits in support and the testimonies by both applicants, the baby, the baby's biological mother, the children's officer, the proposed legal guardians, I discern the following usual issues to arise for determination:

**a. Is the baby herein available for adoption;**

**b. Have the applicants met the requisite conditions for adoption;**

**c. Is the adoption in the best interests of the baby.**

7. Since the baby's biological mother testified that she had freely given up her baby for adoption, and had equally relinquished her rights over her, I am of the opinion that the requisite consent under Section 159 (1) of the Children's Act was validly obtained. The circumstances under which the baby was conceived are manifestly unfavorable, and therefore the consent of the biological father could not certainly be obtained, and the same is hereby dispensed with. The baby was declared free for adoption on 27/03/2015 by which time she was over the mandatory minimum age limit required of a baby before adoption pursuant to Section 158 (1) of the Children's Act.

8. The baby has been under the continuous foster care and control of the applicants from 2015 to date, well beyond the requisite three months envisaged in Section 157(1) of the Act.

**Are the applicants suitable to adopt the baby?**

9. The applicants are Kenyan citizens aged between 25 years and 65 years being the mandatory age threshold for any applicant seeking to adopt a child under the provisions of Section 158 (1) of the Children's Act. They are fully aware of and appreciate the consequences of these proceedings and their obligation to the child and the law once the adoption orders are issued. Having been duly assessed by the Little Angels Network, they were found to be medically, emotionally, mentally, morally and economically fit to adopt the child. To that extent, I have no doubt in my mind that, the two are suitable to adopt baby **LK Alias JWK**.

**Is the adoption in the best interests of the baby?**

10. In matters like this, concerning a child, the court is bound by law to give paramount importance to the principle expressed as the best interests of a child mandated under Article 53 (2) of the constitution as well as Section 4(2) and (3) of the Children's Act. In this matter, the interviews with all concerned, including the child, indicated to court that the child has fully bonded with the adoptive parents, who have been continuously caring and providing for the child and thus satisfied that the applicants are suitable to adopt her. Evidence was adduced on their financial stability to cater for the baby's basic needs including shelter, food, clothing, education and medical care. In fact, the baby told the court that she was happy with her adoptive parents and was happy and proud to be in standard 4 pupil at Pioneer Christian Academy.

11. Both the proposed legal guardians and the adoptive parents fully comprehend their responsibilities and obligations towards raising the baby. I am satisfied that the baby is guaranteed a safe home, economic, moral and psychological growth and support. She has been living with the applicants from 2015 to date and has fully bonded with them. She is being mentored by the applicants in chicken rearing undertaking alongside the same undertaking by adoptive mother.

12. In conclusion, I find and hold that the best interest of the subject child will be best met and served in allowing the application as prayed. I grant all the prayers in the Originating summons dated 29<sup>th</sup> March, 2019.

**DATED SIGNED AND DELIVERED AT MERU THIS 4TH AUGUST 2021**

**PATRICK J.O OTIENO**

**JUDGE**