



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

ADOPTION CAUSE NO. E008 OF 2020 (OS)

IN THE MATTER OF LH alias GW(MINOR)

PGW&

WWN.....APPLICANTS

JUDGMENT

1. The applicants herein moved this court vide the Originating Summons dated 24/11/2020 and brought under Section 158 and 170 of the Children's Act seeking for orders: -

1)spent.....

2) *That the applicants be authorized to adopt LH alias GW(infant).*

3) *That the consent of the infant's natural parents be dispensed with.*

4) *That subsequent to order 2 above, the Honourable Court be pleased to direct the Registrar General to make an entry in the Adopted children Register in the prescribed form as per the attached schedule.*

2. The application is supported by the applicants' supporting affidavit sworn on 24/11/2020 in support of the application.

3. At the hearing of the application, this court gave directions that a social inquiry report of the County Children's Officer and Adoption Society of Kenya be filed.

4. In their report, Hope House Babies Home stated that Bucker Kenya Adoption Services social worker tried to reach the good Samaritans who reported the matter to Thika police station but they could not be reached and further that no one has since claimed the baby; further, annexed (to the said report) is a certificate to declare the child free for adoption. A consent to act as guardian *ad-litem* by (Mr. WMM and Mrs. HMM) dated 24.11.2020 was filed and which report recommended the adoption of the child herein by the applicants as being in the best interests of the minor.

5. I have considered the application herein, the annexures thereto, and all the documents filed before this court. It is my view that the issue for determination is whether the applicants deserve to be granted the orders sought.

6. The law on adoption is provided for under the Children Act No. 8 of 2001. Section 154(1) donates jurisdiction to this court to make an adoption order. Under Section 156 of the Act, no arrangement for adoption of a child ought to be commenced unless the said child is at least six weeks old and has been declared free for adoption by a registered adoption society in accordance with the rules prescribed in that behalf. Section 157 requires that the child concerned should have been in the continuous care and control of the applicant within the Republic for a period of three consecutive months preceding the filing of the application and both the child and the applicant or applicants, as the case may, be evaluated and assessed by a registered adoption society in Kenya.

7. The applicants herein are a couple. Under Section 158 (1) of the Act, in an application for adoption and where there is joint application (as it is in this case) at least one of the joint applicants must have attained the age of twenty-five years and is at least twenty-one years older than the child but has not attained the age of sixty-five years; or (b) is a relative of the child; or (c) is the mother or father of the child. Section 158 (2)-(4) provides for further conditions which the applicant ought to comply with in filing the application for adoption. Amongst those conditions is the consent by the parent. However Section 159 gives this court the powers to dispense with the said consent in the case of the parents or guardian of the child, that is abandoned, neglected, persistently failed to maintain or persistently ill-treated the child.

8. The applicants in their statement in support of the application for adoption order averred that the minor herein is approximately three (3) years old and was referred from Thika Police Station through Thika West Children’s Office to the Hope House Children Home. The OB/NO. xx/xx/xx/ 2019 from Thika Police Station indicates that the child herein was found abandoned on 6.01.2019. The report to declare the child fit for adoption indicates that the child herein is estimated to have been born on 3/01/2019. As such, at the time of the application herein, the child was more than six (6) weeks old.

9. The Applicants averred that the child herein was received in their care and possession on 09.12.2019 and thus she has been in their continuous care and control for a period of nearly one year and ten consecutive months preceding the filing of the application. They further annexed to the application, copies of their marriage certificate indicating that they are a married couple. As such, at the time of making the application herein, they were both aged forty-three years; and so, they were at least twenty-one years older than the child and had not attained the age of sixty-five years. From the records, it is clear that the child herein was found abandoned at Majengo Area in Thika town, Kiambu County on 06.01.2019 and was rescued by good Samaritans. The report by Hope House Babies indicate that the child remains unclaimed and that her relatives cannot be traced. As such, the consent by the parents ought to be dispensed with by virtue of Section 159.

10. The orders sought by the applicant relate to a child. In law, in any matter concerning a child, the best interests of the child are paramount. (See **Article 53(2) of the Constitution and Section 4(3) of Children Act**). The principle of the best interest of the child ensures that decisions are made with the ultimate goal of fostering and encouraging the child’s happiness, security, mental health and emotional development into young adulthood. When it comes to determining the best interest of a child, it is important to consider the evidence laid before the court with regard to parenting ability that is the question whether the parents requesting the adoption order are genuinely able to meet the child’s physical and emotional needs.

11. The report by the Children Officer dated 13.10.2021 indicates that the applicants have bonded well with the child herein and that they have great love for her and deeply desire to look after and care for her and that the applicants are prepared to provide for, and at present are providing, a suitable home for the infant and that they are responsible for the maintenance and upbringing of the said child. Further, they have the means and income to maintain the child.

12. Having considered the circumstances of this case, the documents availed to court and the pleadings herein, the applicants are suitable and fit to adopt the child. It would not be in the best interest to disrupt the life of the child who has bonded well with the applicants since 9.12.2019 when she was placed under the care of the applicants.

13. The best interest is that she grows up in a home set up and in a family. It is evident that the applicants will be able to provide a suitable environment for the child’s upbringing and growth. They have the will and the desire to adopt the child herein.

14. In view of the foregoing, I am satisfied that the applicants have complied with all the legal requirements under the Children’s Act. The Applicants herein have therefore made a case for the issuance of the orders prayed.

15. Prayers (2), (3) and (4) in the originating summons dated 24/11/2020 are allowed.

16. It is so ordered.

Delivered, dated and signed at Embu this 24th day of November, 2021.

L. NJUGUNA

JUDGE

.....**for the Applicant**