



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**ADOPTION CAUSE NO. 9 OF 2018 (OS)**

**CONSOLIDATED WITH ADOPTION CAUSE NO.10 OF 2018 (OS)**

**IN THE MATTER OF BABY MF alias MOA alias LN (CHILD)**

**IN THE MATTER OF BABY MP alias MMA alias JW(CHILD)**

**AND**

**IN THE MATTER OF AN APPLICATION FOR ADOPTION ORDER BY**

**LMI AND GWN**

**AND**

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

**RULING**

1. The applications were brought by way of an Originating Summons and are dated the 5<sup>th</sup> day of July, 2018; the applicants seek the following orders;

(a) That **ROSE KAARI NJUE** be appointed as guardian ad litem herein;

(b) That the applicants **LMI** and **GWN** be authorized to adopt **BABY MF alias MOA** who is to known as **LM** and **BABY MP alias MMA** who is to be known as **JW**;

(c) That the Honorable Court do adopt the parents legal consent as provided by the Children Act to relinquish their parental responsibility over both the children; and

(d) This Honorable Court be pleased to direct the Registrar General to make an entry in the adopted Children Register in the prescribed form.

2. The court delivered its ruling on the 5/10/2019 in the above application and having been found to be tainted with omissions declined to grant the orders sought.

3. The applicants then filed a Notice of Motion under a Certificate of Urgency dated the 20/11/2019 premised under the provisions of Sections 119(d), 147(3) and (4), 156, 157 & 158 of the Children Act and sought a review of the care order made on the 5/10/2019. The applicants relied on their Supporting Affidavit and on the grounds that the earlier omissions were inadvertent and an oversight on the part of the Adoption Society. The applicants and the counsel seized of the matter. The applicants submitted that a comprehensive report had been compiled addressing all the issues and the missing documents had been availed to the court.

4. This application for review was also declined on the 30/04/20 as the report still had the same glaring omissions as alluded to in the ruling. The applicants now seek to review the orders of 5/10/2019 and 30/04/2020 and their prayer is that this Honorable Court be pleased to consider the new comprehensive report and the documents supplied and grant the applicants the adoption order of the twins.

5. This court reiterates the principles for review of an order or decree of the court are; that there must be discovery of new and important material or evidence, which, after the exercise of due diligence, was not within the knowledge or could not be obtained and produced at the

time the order was made; or that there must be a mistake or error apparent on the face of the record; or for any other sufficient reason.

6. This court still maintains that this being an adoption case related to children in need of care and protection that the correction of the omissions by the parties concerned is sufficient reason and it would also be in the best interests of the children; and is satisfied that the application qualifies for the orders sought of review.

7. This court has had occasion to peruse the documents filed herein in support of the application for review.

8. Starting with **BABY MP alias MMA**, Hon Lady Justice Matheka had pointed out that the record showed that committal of this baby to New Life Home Trust by the Children's Court Nairobi on 16/10/2015 vide P&C 237/2015 was not accompanied by any Children Officers Report. The applicants have since rectified this anomaly by annexing the Report prepared by an officer by the name Penina M. Kanyithia and the error pertaining to the date of birth has now been corrected by the said officer vide the letter dated 1/12/2020. The date of birth of the child now reads as 9/08/2015 which also now corresponds to the other documents in the court record related to this baby with particular emphasis to the Notification of Birth document which indicated the date as 9/08/15. The report had also indicated that the father of the baby as '**unknown**' and the mothers name as "**DA**". Again the details of the biological parents have now been corrected vide the same letter and now indicates the fathers name as '**JA**' and the mothers name as '**ELO**' which names are in tandem with the Report and the documents tendered by the applicants in support of their application.

9. The corrections in the report now make it relevant and related to the issues herein.

10. As for **BABY MF alias MOA** the comprehensive report and the accompanying committal documents by the Children Officer and the Committal Order to the New Life Home Trust by the Children's Court Nairobi on 16/10/2015 vide P&C 236/2015 have now been availed by the applicants.

11. This therefore means that the major concern raised by the learned Judge Matheka as to the paper trial of how the children left the custody of their mother (Ester) into the hands of the New Home Life Trust has now been satisfactorily reconciled by the attachment of the proceedings and the Order made by the Children's Court being availed addresses and lays the paper trial '**bare for the court to follow**' as directed by the court in its ruling.

12. The application is now devoid of the contradictions, omissions and anomalies in the names of the parents and missing dates and reports which had negated the parental consents on record. The crucial documents that initiated the process that form the bedrock of the application have now been corrected and availed therefore this court can now proceed to determine the merits of the application and review the orders made on the 5/10/2019.

13. The babies who are twins were born on the 9/08/2015 and being borne out of an incestuous relationship were offered up for adoption by their mother to the Change Trust Adoption Society. Her written '**mother offer**' consent was obtained and is dated 25/08/2015. Both babies **MP alias MMA and MF alias MOA** were committed on the 16/10/2015 to the New Life Home Trust, Kilimani for care and protection under the **Protection and Care Case Nos. 237 and 236 of 2015** by the Children's Court at Nairobi for a period of three (3) years. On the 14/11/2015 they were declared free for adoption under Section 156(1) of the Children's Act and a Certificate Serial Numbers 00084 and 00085 were issued by the Change Trust.

14. **RKN** was appointed as the Guardian Ad Litem. The court then directed the Nyeri County Director of Children's Services to visit and interrogate the applicant's on their suitability to adopt babies **MP alias MMA and MF alias MOA**. He prepared a favorable Social Enquiry Report for each child dated 8/01/2019 and filed it in court on the 4/02/2019.

15. Upon reading and taking into consideration the contents of this report this court is satisfied that all the legal requirements have been adhered, notably; that the applicants were married under customary law and later formalized and solemnized their marriage on the 25/09/2009 and a copy of the Marriage Certificate is annexed to the application and marked as '**LMI**'; at the time of filing this application **LMI** was aged 44 years whereas **GWN** was aged 42 years; therefore both their ages fall within the prescribed legal parameters; the applicants disclosed that they had another adopted male child named **Ds** aged ten (10) years and the Adoption Order was granted on 8/04/2011 by the High Court at Nyeri but they have not availed a copy of either the Certificate of Adoption or the Order. Having adopted their first son they foresee no challenges from their extended family who are also eagerly awaiting the adoption of **MF** and **MP**, their first daughters.

16. **LMI** is currently self employed as a Land Surveyor and earns a gross monthly income of Kshs.100,000/-; as for **GWN** she is employed as a secretary by *particulars withheld* and her gross monthly income is Kshs.22,000/-; this income is supplemented by farming income of Kshs.10,000/-. Their financial standing demonstrates that the applicants are capable of providing the baby with the necessary care and support.

17. The child has been under the care of the applicants since the 18/03/2016 and upon observing the applicants with the children during the court session this court noted the existence of a strong emotional bonding between the children and the applicants which must have grown since the children were placed in the applicants' care; the children appear to be happy, healthy and well taken care of.

18. The current Certificates of Good Conduct were availed and this court is satisfied that the applicants have no criminal record and that there are no adverse circumstances discernible from the families of the applicant or any individual characteristics or lifestyle that would be detrimental to the children;

19. For the reasons stated above, this court is satisfied that the applicants are suitable persons to adopt babies **MP alias MMA and MF alias MOA**; that they have the resources to provide and take care of **MP alias MMA and MF alias MOA** and that the order for adoption will be in the best interest of the baby.

## **FINDINGS AND DETERMINATION**

20. For the foregoing reasons this court makes the following findings and determinations;-

- (i) This court finds that the application for review of the orders of 5/10/2019 is hereby found to have merit and it is hereby allowed;
- (ii) The application for adoption is found to have merit and it is hereby allowed;
- (iii) The Care Order granted on the 5/10/2019 is hereby reviewed and substituted with an adoption order;
- (iv) The applicants are hereby allowed to adopt babies **MP alias MMA** who shall be known as **JW and MF alias MOA** who shall be known as **LM**;
- (v) The parents legal written consent to relinquish their parental responsibility over both the children is hereby adopted as an order of the court;
- (vi) The Registrar General is hereby directed to enter these adoption orders in the Adoption Register; the Registrar Births and Deaths is hereby directed to issue Certificates of Birth in the names **JW and LM**;
- (vii) The Guardian ad Litem is hereby discharged and is hereby appointed as Legal Guardian until babies **JW and LM** attain the age of majority of eighteen (18) years.

Orders Accordingly.

**Dated, Signed and Delivered Electronically at Nairobi this 19<sup>th</sup> day of November, 2021.**

**HON.A.MSHILA**

**JUDGE**