



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION
ADOPTION CAUSE NO. 5 of 2019
IN THE MATTER OF CHILDREN'S ACT 2001

AND
IN THE MATTER OF BABY L (An Infant)

B E T W E E N:

ASW.....First Applicant

KMSecond Applicant

J U D G M E N T

1. The Court has before it an application brought by originating summons dated 28th August 2021. The Originating Summons was replaced by an Amended Originating Summons dated 21st September 2021. The Application is brought under **Sections 154, 156-158, 163 & 170 of the Children's Act No. 8 of 2001**. The Applicants are applying to be authorised to adopt the child that is the subject of these proceedings.
2. The First and Second Applicant are a married couple. The First Applicant Husband is an Imam at [Particulars Withheld] Mosque and the Second Applicant is a teacher by profession who is teaching at an associated institution. The Applicants are also subsistence farmers with some small businesses between them. The Applicants wish to adopt baby L (hereinafter referred to as "the Child". The First Applicant was born in 1959, the Second in 1972. They are both Kenyan citizens of African descent who are Muslims. The First Applicant is an Imam at [Particulars Withheld] Mosque and the Second a Teacher at [Particulars Withheld] Primary School in Mumias.
3. The Child is an abandoned baby. She was found at the gate of the Berur Children's Home in Langas area of Kapsaret sub-county by an employee of the Home. The following day the matter was reported to the Police and the Child was taken to Moi Teaching and Referral Hospital for medical care. The Child was admitted and by 24th January 2018, no-one had come to claim her. The Child was declared as a Child in need of care and protection in P&C 28 of 2018 at the Chief Magistrate. The Child was committed to the care of Thomas Barnardos Children's Home for a period of 3 years.
4. The records show that the Child was born on 25th October 2015. She was abandoned at the gate of Berur Children Home. The matter was reported to Langas Police Station and it was recorded as Occurrence Book No xxxxxx and the Initial Police Letter was issued no-one has gone to the Police Station to claim the Child nor did anyone go to the Children's Home to claim the child. Investigations to trace the biological family of the Child were futile. The Final Police Letter is dated 20th December 2018. The Child was said to be in good health and the home ensured that her immunization schedule was followed.
5. The Child was freed for adoption by the Kenya Children Home Adoption Society Case Committee during its sitting on 15th January 2019 and Freeing Certificate No. xxxx was issued pursuant to Section 156(1) of the Children's Act 2001. The original Freeing Certificate is on the Court File.
6. The Applicants approached the Kenya Children's Home Adoption Society on 25th May 2018 with an intention of being ratified for placement with a female child with a view to eventually adopting from any Charitable Children's Home. They were taken through the adoption process and its implications. An interview and a home study were conducted. The Applicants were approved to be suitable potential adoptive parents by the Society's case committee sitting on 15th August 2018. The Child Leah was placed with them on 4th March 2019 after a successful bonding at the said home. The Adoption Society monitored the placement and conducted the necessary interviews and home visits in order to ascertain if the placement is in the best interests of the Child.

7. The Applicants were married on 29th August 1997 but have not been blessed with a child of their own. They have also adopted or fostered a child from within the family. The Second Applicant's youngest brother suffers from a mental health condition which has not been particularized. He had a child with a woman similarly challenged and it was decided that the Second Applicant would care for that child which they have done. Both Children came to Court during the Hearings of this Application.

8. The Applicants are both employed and therefore are financially stable. They live in [Particulars Withheld] Village, Mumias. They own their own home and some land which they farm and keep cattle for household needs.

9. The Applicant's plans for the Child to provide for her and educate her according to her aspirations. They intend to instill Islamic virtues and discipline into the Child and provide for her prosperity and growth as a valuable member of society. The Applicants are of good health. They are said to be mentally balanced, emotionally secure and able to take care of a child placed in their care. The Applicants enjoy teaching. They have informed their families of their intention to adopt and they are very well supported.

10. The Applicants had initially intended to appoint MMM and her husband PWW as legal guardians in the event they are unable to care for the child for whatever reason. However, on reflection during a Court Hearing, that choice was reviewed because MM said that she would make the Child change her religion if they ended up in such a position.

11. *The Kenya Children's Homes Adoption Society through its Chief Executive Officer and Adoption Program Officer make the following recommendations:*

The Applicants herein ASW AND KM have proven their ability to take care and provide parental responsibility to the minor herein Leah for over 7 months. The minor in this cause was committed to the care and protection of Thomas Barnardo House and has never been claimed since her abandonment..... The Kenya Children's Home Adoption Society's case committee on 17th July 2019 analyzed the case and was satisfied that the applicants in this cause proceed to court to finalise the process.

The Adoption Society respectfully recommends that the minor in this cause Lbe adopted by the applicants herein ASW and KM. The Child acquires the names LHN if the orders are made in favour of the Applicants. Adoption will be in the best interests of the Child. The Court has also heard from the Mumias Children's Officer."

12. The Guardian ad Litem appointed in this matter is RMM. She is a Teacher as well as a farmer in [Particulars Withheld] in Mumias. She has filed her Report dated 23rd June 2021. She says that her observation of the family was not through specific visits but a continuous process as she knows the family well and they visit each other. She finds the Applicants to be loving and caring parents for L. She says the Child has fitted in well with the family and they have bonded well. She strongly recommends the adoption as in the best interests of the Child.

13. The Children's Officer (Dorcas Wakasa) has also filed a report. She says that the Child has bonded so well with both her parents and her 'sister' AM. She is in good health and attends school at a private school in Mumias ([Particulars Withheld] Academy). The Children's Officer observes that; *"The adoptive parents have so far two children for adoption purposes. All their energies and socio-economic efforts are geared towards the enhancement of the children's lives. They are longing to have the legal documents for their child to enable them to enrol her on a medical scheme, savings scheme and NEMIS."*

14. The Applicants would like to appoint MM and his wife MJ to be the Legal Guardians of the Child should the Applicants become unable to take care of her. They have agreed to do so. M is the brother of the Second Applicant. They are both teachers and have three children of their own.

1. The Court is also satisfied that the Child is in need of an alternative care arrangement. Therefore, it is Ordered that:

(1) The Applicants be and are hereby authorised to adopt Baby L and the Child thereafter to be known as **LHN**

(2) THAT **MM** and his wife **MJ** be and are hereby appointed legal guardians of the child in the event of the death or incapacity of the Applicant's before the child attains the age of majority

(3) THAT the child be presumed to be a Kenya Citizen by birth

(4) THAT the Registrar General be directed to enter the adoption in the Adopted Children Register.

(5) THAT the Registrar of Births and Deaths be and is hereby ordered to make the appropriate entries in the Adopted Children's Register in respect of the Child.

(6) **LHN** was born in Kenya and is therefore presumed to be a Kenyan Citizen by birth. She is therefore entitled to a Kenyan Passport.

15. The Court regrets that it was unable to deliver this Ruling when it was first scheduled. That was due to other professional responsibilities. Any inconvenience to the Parties is sincerely regretted.

Order accordingly,

FARAH S. M. AMIN

JUDGE

Dated and Signed this the 20th day of December 2021 at Kakamega High Court.

As today is the last day of term and the Parties need this Order for the next school term, their attendance for the delivery of this Judgment was dispensed with but they were notified in open court that it would be handed down on Monday 20th December instead of 15th December 2021.