



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

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 LM (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 5th day of July, 2018; the applicants seek the following orders;
 - a. That **RKN** 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;
 - 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; the omissions are as set out hereunder;
3. On the 20/11/2019 the applicants filed a Notice of Motion under a certificate of urgency 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 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; and that a comprehensive report had been compiled addressing all the issues and the missing documents had now been availed to the court;
4. The applicants' prayer was this Honorable court be pleased to consider the new comprehensive report and the documents supplied and to review the orders of 5/10/2019 by granting the applicants the adoption order of the twins;
5. The application for review could not be placed before the Honorable Judge for hearing and determinations she had already been transferred from the station and therefore the application for review was placed before this court and for the reasons stated above is found to be properly before this court;

6. 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.

7. After hearing submissions of the applicants it is noted that there was no contention of discovery of new and important material or evidence, which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced at the time the order was made; there is also no contention of any mistake or error apparent on the face of the record;

8. The applicants have tendered no new material or evidence nor is there any contention of mistake or error on the face of the record; the reasons advanced by the applicants are that the documentary material was inadvertently omitted by the adoption society, by themselves and by the counsel seized with this matter; nevertheless this being an adoption case and relates to children in need of care and protection this court will overlook the first two principles and finds good reason for applying the third principle which provides for any other sufficient reason; and is therefore satisfied that the oversight and the omissions by the parties concerned is sufficient reason for the application to qualify for the orders sought of review; this court also finds that the applicants filed the application for review in a timely manner and thus adhered to the timelines given.

9. This court has had occasion to peruse the judgment of Hon. Lady Justice Matheka made on the 5/10/2019 and also the comprehensive report and the documents filed herein in support of the application for review; but unfortunately finds that crucial documents are still tainted and also are still missing;

10. Starting with **BABY MP alias MMA** the learned Judge 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 purport to rectify this anomaly by annexing a Report that is dated the 30/09/2015 prepared by an officer by the name Penina M. Kanyithia; the date of birth of the child indicated in this report is 17/11/2014 which date does not correspond to the any of the other documents in the court record related to this baby with particular emphasis to Notification of Birth document which indicates the date as 9/08/15; the report also indicates that the father of the baby is '**unknown**' and the mothers name as "**DA**"; again these details of the parents is not synonymous with any of the documents tendered by the applicants;

11. For the forgoing reasons this crucial report has serious anomalies which deem the report as being unrelated to the issues herein;

12. As for **BABY MF alias MOA** this court has combed through the comprehensive report and still finds that the report is devoid of the accompanying committal document by any Children Officers Report of this baby to the New Life Home Trust by the Children's Court Nairobi on 16/10/2015 vide P&C 236/2015;

13. This therefore means that the major concern raised by the learned judge as to paper trial of how the children left the custody of their mother (Ester) into the hands of the New Home Life Trust is yet to be addressed by Reports from the Children Officer being availed and as stated by the court in its judgment that this must '**be laid bare for the court to follow**';

14. This court has similar doubts like the learned Judge alluded to in the judgment; and it is this court's considered view that the application is still tainted with contradictions or anomalies in the names of the parents and missing reports which then negates any parental consents on record; the crucial documents that initiated the process that also form the bedrock of the application need to be availed before this court can proceed further in adjudicating the merits of the application;

DETERMINATION

15. The Care Order granted on the 5/10/2019 is hereby extended for 90 days from the date hereof; the applicants are hereby granted care, custody and possession and parental responsibilities over the two children **BABY MF alias MOA** and **BABY MP alias MMA**;

16. Mention on the 30th day of July, 2020 for directions.

Orders Accordingly.

Dated, Signed and Delivered at Nyeri this 30th day of April, 2020.

HON.A.MSHILA

JUDGE