



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO.157 OF 2018 (O.S.)

IN THE MATTER OF THE CHILDREN ACT NO. 8 OF 2001

AND

IN THE MATTER OF APPLICATION FOR THE ADOPTION OF

BABY N. alias Abandoned Baby

AND

ORIGINATING SUMMONS OF AN APPLICATION FOR AN ADOPTION ORDER

BAO.....APPLICANT

JUDGMENT

1. The Applicant herein, BAO (hereafter referred to as the Applicant) has applied to this Court by way of this Originating Summons dated 24.10.2018 seeking for orders that she be authorized to adopt Baby N alias Abandoned Baby and to call her NAO (hereafter referred to as the Child).
2. The Applicant is an adult single female who has never been married and has no biological children.
3. The applicant works with [particulars withheld] where she works as an accountant.
4. The Child was born on 2.9.2017 to LK at Langas Health Centre in Eldoret Town and the mother who was 17 years old abandoned the child after delivery.
5. The matter was reported to Langas Police Station vide Occurrence Book No. 56/21/9/2017 by a nurse at Langas Health Centre and the minor was taken to Moi Teaching and referral Hospital.
6. An initial Police letter dated 21/9/2017 was issued. The child was admitted at Thomas Barnado House for Care and Protection by Eldoret Law Courts vide Protection and Care Case No. 109/2017.
7. The Police confirmed that no one had claimed the child and that efforts to trace the biological parents was futile.
8. The Child was declared free for adoption by the Kenya Children Home Adoption Society vide Certificate No. 1408 pursuant to **Section 156 (1)** of the **Children Act 2001**.
9. The Kenya Children's Homes Adoption Society filed a report dated 14.11.2018 and the Director Children's Department also investigated the matter pursuant to order of this Court and filed a report on 18.2.2019.
10. The guardian ad litem filed a report dated 20.3.2019. All the reports are favorable and they recommend the adoption.
11. I find that the consent of the adoptive parents could not be obtained as the child was found abandoned. **In the matter of L.O (CHILD) [2012] Eklr** the court stated that :

“For the avoidance of doubt, the rights and duties of the biological parents of the child are hereby extinguished and all the parental rights, duties, obligations and liabilities of the child, JMM, now vest in and shall be exercisable by and enforceable against the Applicants as the adopter parents as if the child were born in wedlock to the adopter parents and the child, to all

intents and purposes, now stands to the adopter parents as a child born in wedlock and both adopter parents shall henceforth be the lawful father and mother of the child.”

12. Of importance is that, 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 of paramount importance. **Article 53 (2)** of the **Constitution** provides the guiding principle on this question as follows:

“A child’s best interests are of paramount importance in every matter concerning the child.”

The other pertinent law is the **Children Act No. 8 of 2001** and in particular Section 4(3) thereof.

13. I have considered the Originating Summons dated 24th October 2018 together with Supporting Affidavits and the reports filed herein and annexures thereto. My findings are as follows:

- (i) I find that the Applicant meets the threshold for adoption of the Child.**
- (ii) The Content of the Biological parents is dispensed with since the child was found abandoned.**
- (iii) The Applicant be and is authorized to adopt the child and to name her NAO.**
- (iv) The date of birth of the Child shall be 2nd September, 2017.**
- (v) The legal guardians of the child shall be AK and VSOO in case of incapacity of the Applicant before the child attains the age of the majority.**
- (vi) The Registrar General is directed to enter this order in the Adoption Register and to issue a Certificate of Birth.**
- (vii) The Guardian ad litem be and is hereby discharged.**

DELIVERED, DATED AND SIGNED IN OPEN COURT THIS 26TH DAY OF APRIL, 2019

ASENATH ONGERI

JUDGE OF THE HIGH COURT OF KENYA, NAIROBI.