



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**FAMILY DIVISION**

**ADOPTION CAUSE NO. 117 OF 2016**

**IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001**

**AND**

**IN THE ADOPTION OF BABY LF (MINOR)**

**JMN & RNM .....APPLICANTS**

**JUDGMENT**

1. JMN and RNM herein after referred to as the 1<sup>st</sup> and 2<sup>nd</sup> applicants respectively, moved this court on 22<sup>nd</sup> September 2016 vide an Originating Summons dated 21<sup>st</sup> September 2016 seeking: authorization to adopt baby LF (hereafter referred to as the minor); that MKK be appointed as guardian ad litem of the minor; that the Director Children Services do evaluate the applicants and file a comprehensive report and, that the Registrar General be directed to enter this adoption in the adoption register;
2. The application is supported by a statement of particulars and affidavit jointly sworn by the applicants on 21<sup>st</sup> September 2016 and further supporting materials.
3. The applicants who are Kenyan citizens are husband and wife. They got married under Kamba Customary Law sometime 1991 and thereafter formalized the same on 31<sup>st</sup> January 2013 at Machakos District Registrar's office where a marriage certificate S/No. [Particulars withheld] was issued.
4. The applicants have not been blessed with a biological child although the 2<sup>nd</sup> applicant has been blessed from her previous marriage with a girl child known as NMN born on 16<sup>th</sup> February 1983.
5. The 1<sup>st</sup> applicant now aged 55 years is a technician (Particulars Withheld) currently working with [Particulars Withheld] Ltd. The 2<sup>nd</sup> applicant who is now 59 years old is a farmer who is self employed. Their motivation to adopt was prompted by the desire to have a child for companionship and also to expand their family.
6. Regarding the minor presumed to have been born on 20<sup>th</sup> October 2011, he was found by a school boy having been abandoned at a playing ground within [Particulars Withheld] on 30<sup>th</sup> October 2012. He was then taken to a Parish Priest who with the help of the area chief reported to Meru Police Station the same day vide OB No. [Particulars withheld]. The police thereafter relayed the child's incident of abandonment to Imenti North District Children's Officer.
7. Subsequently, the Imenti District Children office found a place for the minor at the New Life Home Trust in Nyeri pending formal committal by the court. On 16<sup>th</sup> November 2012, vide Protection and Care case No. 71/2012 Meru Children's Court, the child was formally committed to the same home for a period of three years.
8. Every effort to trace the child's parents and or close relatives having failed to bear fruits as evidenced by police initial letter dated 30<sup>th</sup> October 2012 and final letter 6<sup>th</sup> May 2013, the child was declared free for adoption on 22<sup>nd</sup> May 2013. He was subsequently placed under the mandatory 3 months care and control of the applicants on 23<sup>rd</sup> May 2013.
9. On 8<sup>th</sup> December 2016, MKK was appointed as the guardian ad litem to the baby and the Director Children Services directed to file his assessment and evaluation reports regarding the applicants within 45 days.
10. Prior to the hearing, the Director Children Services, guardian ad litem and Little Angels adoption society filed their respective reports

dated 16<sup>th</sup> April 2019, 24<sup>th</sup> April 2019 and 7<sup>th</sup> December 2016 thus recommending the adoption.

11. Both stakeholders found the applicants suitable to adopt the baby. They described them as caring and loving, financially stable, Christians with no criminal records and responsible parents.

12. During the hearing, the applicants pleaded with the court to allow their application. Upon interrogation by the court, they confirmed that they understood and appreciated the consequences of adoption, their responsibilities to the minor and that it was permanent. Their daughter NM also testified signifying her consent.

13. I have considered the application herein, supporting affidavits and materials placed before court, applicants' testimony and the relevant applicable legal provisions. Issues for determination are:

**(1) Whether the child is available for adoption.**

**(2) Whether the applicants are suitable to adopt.**

**(3) Whether the adoption is in the best interest of the baby.**

14. The minor herein was found on 30<sup>th</sup> October 2012 abandoned by his parents at a school playing ground. He was rescued by a good Samaritan who took him to a priest and subsequently committed to a Children's Home where he remained unclaimed till placed under the care and protection of the applicants on 23<sup>rd</sup> May 2013. Every effort to trace his parents or close relatives have been futile. This is evidenced by the aforesaid initial and first police letters.

15. Pursuant to Article 14 (4) of the Constitution, a child found in Kenya who appears to be less than eight years of age, and whose nationality and parents are not known is presumed to be a citizen by birth. Equally, under Section 157 (1) of the Children's Act, any child who is resident with Kenya may be adopted whether or not the child is a Kenyan citizen or was not born in Kenya.

16. In view of the above provisions and this being a local adoption, the court is enjoined under Section 154 of the Children Act to make adoption orders affecting the minor herein who is above six weeks and below 18 years in compliance with Section 158 of the Children's Act. Accordingly, it is my finding that the child is available for adoption and that consent is hereby dispensed with as there is nobody claiming him.

17. As regards the applicants' suitability, they are both Kenyan citizens aged between 25 and 65 years. They have been described as suitable and responsible people with no criminal record. They are Christians living in their own house built on an acre land. Their net monthly income is about 23,000/= per month. They have met the necessary legal requirements to adopt the baby. I have no doubt that they are suitable for purposes of adopting the minor.

18. Concerning the best interest of the child, the underpinning provisions are Article 53 (2) of the Constitution and Section 4 (2) and (3) of the Children's Act which provides that, in every decision made by the court or any administrative body touching on the affairs of the child, the cardinal consideration is the best interest of the child.

19. The baby herein having been abandoned has no known close family relative. Like any other normal child, he is in need of basic provisions like food, clothing, education, medical care, shelter, parental guidance and love.

20. He has fully integrated with the applicants. He needs generational identity and all the necessary support any ordinary child would require. This adoption is ultimately in his best interest.

21. Accordingly, the application herein is allowed with orders as follows:

**(a) That the applicants herein be and are hereby authorized to adopt baby LF who henceforth shall be known as LNM.**

**(b) That the child's date of birth shall be 20<sup>th</sup> October 2011 and place of birth Meru County Kenya.**

**(c) That the child is presumed to be a Kenyan.**

**(d) That the consent of his biological parents is dispensed with.**

**(e) That the Director of Immigration is authorized to issue the baby with a Kenyan passport.**

**(f) That the Registrar General is authorized to enter the adoption order in the adoptions register.**

**(g) That MMM shall be the legal guardian to the minor in the event the applicants die or incase of any eventuality before the child attains age of majority.**

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 26<sup>TH</sup> DAY OF SEPTEMBER, 2019.**

**J.N. ONYIEGO**

**JUDGE**