



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

ADOPTION CAUSE NO. 1 OF 2015

IN THE MATTER OF BABY D

ON APPLICATION FOR AN ADOPTION ORDER

BY

1. OMI

2. GNM.....APPLICANTS

RULING

1. The adoption order was sought vide originating Summons under Sections 154, 156, 157, 158, 160, 163, 164 and 170 of the Children Act No 8 of 2001 and Section 24 of the Interpretation and General Provisions Act Cap 2 of the Laws of Kenya and all enabling provisions of the law and is undated. The Applicants **OMI and GNM** through their advocates Kalinga & Co. Advocates seek the following orders:

- 1. THAT JNN of c/o Post office Box [xxxx] Nairobi in the Republic of Kenya be appointed Guardian ad Litem.**
- 2. THAT the Director of Children's Department, office of the Vice-President, Ministry of East Africa Community, Labour and Social Department of Children's Services do investigate the applicants fitness to adopt and file a report.**
- 3. THAT the Applicants be authorized to adopt baby D and the baby be known as LNM.**
- 4. THAT MWK be appointed Legal Guardian of the child.**
- 5. THAT the child be considered a Kenyan Citizen.**
- 6. THAT the court be pleased to make any further orders it deems necessary.**

2. In the preliminary stage, prayer 1 and 2 were granted by the court.

3. According to a report filed in court by Kenya Children's Homes on 25th March, 2015 the minor was presumably born on 5th January, 2010 as per birth certificate entry No. [xxxx] and he was found abandoned by the roadside on 7th December, 2012 in Embakasi Area. The report states that the child was rescued by a good samaritan who took him to Villa Police Post and booked vide OB [xxxx] and the officer in charge referred him to Thomas Barnado House where he was admitted on 8th December, 2012 as an abandoned child in need of care and protection. The report states that the minor was committed to Thomas Barnado House for care and protection via the Children's Officer at Langata at the Nairobi Children's Court on 15th February, 2019 vide Protection and Care Case [xxxx]. According to the report, efforts to trace the biological parents was futile and no one was able to claim the child.

4. On 12th July, 2013, the minor was declared free for adoption by the Kenya Children's Homes Adoption Society Case Committee sitting on even date vide certificate number 0968 issued on the same day and was placed in the care of the applicants for mandatory bonding.

5. According to the applicants' affidavit dated 27th January, 2015, O is a driver while Georgina is a home maker. The applicants are Kenyan citizens married to each other since 6th October, 2012 and the infant was received under their joint care and possession on 19th July, 2013 and Thomas Barnado House where the minor was housed previously had no objection to this application and further that MWK consented to be legal guardian of the minor. They maintain that they have never received payment or reward in consideration for the application.

6. **MWK** swore an affidavit dated 27th January, 2015 to confirm consent to act as Legal Guardian and **JNN** vide affidavit dated 27th January, 2015 gave consent to act as guardian ad litem of the minor.

7. On 26th May, 2015 this Court directed the Director of Children Services to conduct investigations as to the suitability of the Applicant to adopt **BABY D** and submit a report and findings to Court.

8. **Selastine W. Nthiani** is the County Coordinator Children's Services, Makueni. She conducted a social inquiry on the Applicants by interrogating them and the minor on 30th May, 2019 at [particulars withheld], Kibwezi Sub-County. It was observed that the applicants are husband and wife and had earlier contemplated divorce because they had no child and were thus happy with this opportunity to adopt the minor so as to give company to SM whom they had adopted in 2011. They have been residing with the minor who seemed to have bonded well with the applicants and is well provided for in terms of clothing and he enjoys going to school at [particulars withheld]. The applicants felt that they are in a position to take care of **BABY D** and were willing to take on the responsibility. It was her conclusion that the applicants are well suited to adopt **BABY D**. On 11th June, 2019 the said officer filed a favourable report as to the suitability of the Applicants to adopt to **BABY D** and sought to have the same adopted by this court.

9. On 18.6.2019, Peter Ndotono appeared in court to recommend the applicants' application and to confirm the suitability of the applicants to adopt the minor as well as adopt the report dated 16.2.2015. **MWK** appeared before me on 18.6.2019 to confirm and rely on the contents of his affidavits and willingness to take up his duties as well as recommend the applicant to adopt **BABY D**. The applicants also appeared before me on 18.6.2019 and relied on their affidavits to support the application and indicated willingness to adopt and cater for the needs of the minor. It is noted that the applicants had earlier successfully adopted a baby and hence the second application is favourable as they are suitable since they have shown their ability to take care of the minors.

10. This court is satisfied that the Applicants are suitable persons to adopt **BABY D** and that they are financially stable and have the means to provide and care for him. I also find that it is in the best interests of the child to allow the application as the child has bonded well with them and known them as his parents.

11. In the result the applicants' application dated 27.1.2015 is allowed in the following terms;

1. THAT the Applicants be and are hereby authorized to adopt **BABY D and the baby be known as **LNK**.**

2. THAT **MWK be and is hereby appointed Legal Guardian of the minor.**

3. THAT the minor herein is declared a Kenyan citizen by birth.

4. THAT the Registrar-General do make in the Adopted Children Register an entry recording the adoption in accordance with the particulars set out in the Schedule to this order.

5. THAT the Guardian Ad Litem is hereby discharged.

It is so ordered.

Dated and delivered at **Machakos** this 24th day of **October, 2019**.

D. K. Kemei

Judge