



REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI
ADOPTION CAUSE 138 OF 2016

IN THE MATTER OF AN APPLICATION FOR ADOPTION

OF

BABY T.J.P.....MINOR

BY

L W M.....APPLICANT

JUDGMENT

By way of Originating Summons Application and an Affidavit in support dated 4th November 2016, the Applicant sought Orders that she be allowed to adopt Baby Tessa Jean Petty (herein after referred to as T.J.P ‘the Child’), that M W M be appointed as guardian ad-litem for the purposes of the Adoption proceedings, that the guardian ad-litem and the Director of Children Services do investigate her fitness to adopt the Child and file a Report and that the Child be known as L N.

The Applicant herein is an Adult Kenyan Citizen who lives in Nairobi County. She is married but separated and without any biological children of her own. She is a business lady who deals with Real Estate Properties. She wishes to adopt baby T.J.P so as to expand her family as well as give a deserving Child a family to belong to.

The Child in matter Baby T.J.P is a female child presumed to have been born on 12th November 2015 at Thika Level Five Hospital as evidenced by the Acknowledgment of Birth Notification of serial no B1 AA 4787238. She was found abandoned at the post-natal ward cube 3 of the said Hospital. The matter was reported to at Thika Police Station on 18th November 2015 and recorded vide O.B No. 24/20/11/2015. The Child was discharged and admitted to Jean Petty Legacy Home, Kiambu on 20th November 2015 to stay in their care until further arrangements are made. She was then committed into custody at the said Home as a child in need of care and protection on 3rd December 2015 by the Thika Children Court vide Protection and Care Case No. 324 of 2015. Correspondences from Thika Police Station dated 18th November 2015 and 8th June 2016 confirmed that no one had come to claim the Child and that efforts to trace the mother of the Child were futile. She remained in the Home until she was taken in for foster care by the Applicant on 1st August 2016.

On 22nd July 2016, Dr. J. Wanjohi from Thika Level Five Hospital sent a letter to Little Angels Network Adoption Society affirming that the Child was indeed found at the Hospital; abandoned by its Mother whose details remain unknown. The Child was declared free for adoption by the Little Angels Network Adoption Society on 29th July 2016 and a freeing certificate of serial no. 001746 was issued pursuant to

section 156(1) of the Children’s Act, 2001.

M W M filed Affidavit and Consent to act as guardian ad litem on 4th November 2016. She was appointed vide a Court order dated 29th November 2016 and ordered to file a Report after conducting a home visit at the Applicant’s residential home. In the said Report dated 30th November 2016, she stated that the Applicant and the Child have bonded well, that she is being well taken care of by the Applicant and that the Applicant’s home was a conducive environment for the Child to grow in. She also stated that the Applicant’s family is very close and they are involved in the Child’s life. From these observations, she recommended that the Applicant be allowed to adopt the Child.

The Adoption Society; Little Angels Network similarly filed their Pre-placement Report dated 29th May 2015. They stated that she was in good general health and that she was mentally and emotionally stable. Further, they reported that she was also financially stable and had the means to provide for the basic needs of the Child. They said that the Applicant had duly signed the Certificate of Acknowledgment and was thus ready to take up full responsibility of the Child. It was also stated that the Applicant was applying for the adoption as a single applicant because her husband declined to give his consent and their efforts to obtain the said consent had failed as he was not willing to be involved in any capacity. From their observations, they submitted that the Applicant had indeed bonded with the Child. She was accessed by the Adoption Society case committee sitting on 29th May 2015 and found suitable to adopt the Child.

The Department of Children services also filed their Report on 10th February 2017 pursuant to Court order on 29th November 2016. From the home visit conducted by their Officer, it was reported that the Applicant has provided a good environment for the Child and that she is being well taken of and that she was happy and in good health. It was stated that the Applicant is financially, emotionally and physically stable to take care of the Child. She was said to be of good criminal record as evidenced by a copy of her certificate of good conduct of serial no. 127281. They submitted that the Applicant has proved capable of taking parental responsibility over the Child and that she had fulfilled all the legal requirements for adoption under the Children’s Act. Accordingly, they recommended the Adoption as it will be in the best interest of the Child.

From the evidence adduced and Reports filed, it is not in issue that this is a local adoption. It is certain to this Court that the Applicant herein is stable and willing to take up parental responsibility with regards to the Child. She has been placed with the Child for the mandatory bonding period and both have bonded well and become fond of each other. The Applicant meets all the pre-requisite to adopt a Child as prescribed in **Section 156 of the Children’s Act, 2001.**

Section 158. (1) Provides,

“An adoption order may be made upon the application of a sole applicant or jointly by two spouses where the applicant or at least one of the joint applicants—

(a) has attained the age of twenty-five years and is at least twenty-one years older than the child but has not attained the age of sixty-five years; or

(b) is a relative of the child; or

(c) is the mother or father of the child.”

The Applicant has made her application in her capacity as a sole applicant seeking to adopt a female Child in line with the above elucidated provision. All necessary consents required under **Section 158(4)** have been furnished before this Court. Pursuant to **Section 159(a) and (c)**, this Court dispenses with the consent of the biological mother of the Child and that of the Applicant’s Husband as the same cannot be obtained for the reasons stated herein above.

In light of the above, this Court allows the Applicant’s adoption applicant because it is in the best

interests of the Child. Accordingly, it is ordered that; the Applicant L W M is hereby allowed to adopt BABY T J P. Henceforth, the Child shall be known as L N and presumed to be a citizen of Kenya by birth, born on 12th November 2015 in Thika County within the Republic of Kenya. D M M, brother to the Applicant is hereby appointed as the Legal Guardian of the Child should any misfortune befall the Applicant. The Registrar General is hereby ordered to enter this adoption order in the Adoption Register. The Guardian *ad-litem* is hereby discharged.

IT IS SO ORDERED.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 27TH DAY OF JULY 2017

M. W. MUIGAI

JUDGE