



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 195 OF 2014 (OS)

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

IN THE MATTER OF ADOPTION OF BABY L O T

BY

S N T AND N W N (APPLICANTS)

JUDGMENT

1. The Applicants S N T and N W N are in a monogamous marriage which was solemnized in a P.C.E.A church at Magumu in Nyandarua on 16th March, 2013. They have no child of their own. They wish to adopt the child known as Baby L O T a minor of male sex, through the Originating Summons dated 14th August, 2014. They indicate that they are both farmers. They reside in Kinangop and are both Christians.

2. The child in this matter according to records is said to have been born 18th October, 2011. He is said to have been found under the custody of a woman named R who was arraigned in court for being in possession of a stolen child in Kilgoris. The woman claimed to have bought the child from a couple in Gucha who went by the names of B K O and W T. The matter was reported at Kilgoris Police Station and was recorded in vide OB No. 38/22/11/2011.

3. The child was admitted to Africa Gospel Church Baby Centre for care and protection on 24th November 2011 and was officially committed to the same home by the Kilgoris Children's court on the same date vide P&C file No. 44 of 2011. The biological parents of the child were not traced, nor did anyone come forward to claim the child.

4. The child was declared free for adoption on 5th July, 2013 by the Kenya Children's Home Adoption Society, vide certificate No. 0970. He was released into the custody of the Applicants for mandatory foster care pending adoption on 16th July, 2013. Upon signing a Foster Care Agreement dated the same day. Since then the child has been in the continuous custody and care of the Applicants. Prior to the hearing of the adoption application, Kenya Children's Home, an adoption society, prepared and filed a report in court.

5. The Adoption Society, guardian ad litem and the Director of Children's Services have all made home visits and established that the Applicants are financially and emotionally capable of providing for the up keep and education of the child.

6. The Director of Children's Services has, in a report dated 28th September, 2014 recommended the adoption for reasons that the child stands to gain the opportunities provided by becoming the son of the

Applicants and growing up in a loving home rather than growing up in an institution.

7. Of concern was the recommendation of the Director Children Services that the Kenya Children Homes should seek the consent of the biological parents of the child since they are known before the adoption orders are made. The same Children's Department is captured in the Kenya Children's Home case summary for freeing the child for adoption as having confirmed that it had no objection to the child being so freed for adoption since none had come forward to claim him. Further that efforts by the Children Services and the police to trace the parents of the child were not successful.

8. The guardian ad litem, J K W also filed a report that was favourable and recommended the adoption of the child by the Applicants. He observed that the child appeared happy healthy friendly and quite at home with the Applicants. That the child exhibited a sense of attachment and mutual bonding, which was assigned of integration and continuous loving by the Applicants.

9. The child was in court during the hearing and appeared to have bonded well with the Applicants. He was jovial and related well with the Applicants. The child appeared clean, well fed and well-adjusted to his new parents.

10. Of paramount importance in this application is the best interests of a child since, the orders sought by the Applicants relate to a child. **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.

11. This is a local adoption where the Applicants in my opinion fulfil the requirements for local adoption under the Children Act, 2001. They have proved during the placement period prior to adoption that they are capable of taking on the challenge of raising the child in this matter. Secondly they meet the social parameters that are considered relevant to their taking on parental responsibility and custody of the child in this matter on a permanent basis as would be conferred to by the adoption order sought.

12. From the foregoing, this court has formed the opinion that it would be in the best interest of the child to be adopted by the Applicants. Reasons wherefore I allow the prayers sought in the Originating Summons dated 14th August, 2014 and order as follows:

- i. The Applicants, S N T and N W N are hereby allowed to adopt **Baby L O T** who shall henceforth be known as **L T**.
- ii. Her date of birth shall be presumed to be 18th October, 2011. He is presumed to have been born in Kenya in accordance with **Article 14 (3)** of the **Constitution**, and the place of birth shall be Gucha.
- iii. J M K and L N T (sister and brother-in-law to the male Applicant) are hereby appointed legal guardians of the child in the event that the Applicants die or are incapacitated by ill-health.
- iv. The Registrar General is directed to enter this order in the Adoption Register.
- v. The Director of Immigration is hereby authorised to issue the child with a Kenyan passport.
- vi. The guardian ad litem is hereby discharged.

It is so ordered.

SIGNED DATED and DELIVERED in open court this 27th day of October 2016.

L. A. ACHODE

JUDGE

In the presence ofAdvocate for the Applicants