



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**ADOPTION CAUSE NO. 199 OF 2015**  
**IN THE MATTER OF THE CHILDREN ACT, 2001**  
**AND**  
**IN THE MATTER OF BABY C H**  
**L N M.....APPLICANT**  
**JUDGMENT**

**INTRODUCTION**

L N M (hereafter ‘the Applicant’), through her Originating Summons dated 28<sup>th</sup> August, 2015 wishes to adopt Baby C H and she seeks the following orders:

- 1. That H N M of P.O Box 12585-00400, Nairobi, be appointed guardian ad litem of B C H.***
- 2. That the Applicant be authorized to adopt Baby C H***
- 3. That upon adoption, the child be known as C M W.***
- 4. That the Registrar General be directed to enter this adoption into the Register of Adoptions.***
- 5. That the child be presumed a Kenyan Citizen and be accorded all rights accruing to a Kenyan citizen.***
- 6. That the Director of Immigration services do issue the child Baby C H a Kenyan passport upon application.***

**THE APPLICANT’S CASE**

In her Statement dated 28<sup>th</sup> August, 2015, in support of the present Application, the Applicant contended that she was born on 18<sup>th</sup> February 1967 and she is a dental surgeon and a public health specialist working at Astradental Clinic in Nairobi. It was her statement that she resides at Muthaiga area in Nairobi.

She contended that she is a Kenyan citizen and of African race and she has resided in Kenya since her birth and she intends to reside therein indefinitely. Further, that she practices the Christian faith and if she adopts the child, she shall raise her in that denomination.

It was her further position that she received the child into her care on 27<sup>th</sup> March, 2013 and has since been living with her and he even recognizes her as a mother. Accordingly, that in the event of any eventuality befalling her, she appoints one S N M of P.O Box 11143-00400, Nairobi and M W W of P.O Box 8098-00100, to be the legal guardians of the child.

The Applicant lastly stated that she had not received or agreed to receive and no person had made or given to her any payment or reward in consideration of the present Application for adoption and further, she has never made any such Application in respect of the child.

### **DETERMINATION**

The key issue for determination is whether the Applicant has satisfied the criteria to warrant the grant of the adoption and the orders sought in the present Application. In that regard, **Part XII** of the **Children Act, 2001** prescribes the guidelines and threshold to be met by an Applicant in Applications such as the present one.

It should not be lost that **Section 158 (2)** of the **Children Act, 2001** directs the Court not to make adoption orders in circumstances where an Applicant is of the opposite sex of that of a child who is to be adopted. The said **Section** stipulates that:

*An adoption order shall not be made in favour of the following persons unless the court is satisfied that there are special circumstances that justify the making of an adoption order-*

*a. A sole male applicant in respect of a female child;*

*b. A sole female applicant in respect of a male child;*

*c. An applicant or joint applicants who has or both have attained the age of sixty-five years;*

*d. A sole foreign applicant.*

It therefore follows that the present case is one which falls within the ambit of **Section 158 (2) (b)** aforesaid and hence the Court is to satisfy itself as to the special circumstances arising herein.

Applying the same to the instant matter, it will be noted that the child herein was abandoned in Kianyaga Town, he was rescued and admitted at Kianyaga Children's Home on 2<sup>nd</sup> September, 2013 temporarily through Kerugoya Children's Office, as a permanent placement was being sought. The matter was reported to Kianyaga Police Station where it was recorded as OB 4/1/9/2013 and since the incident was reported, no one has presented to claim the child. Furthermore, according to the final Report by the OCS Kianyaga Police Station, dated 16<sup>th</sup> October, 2014, the child was abandoned and nobody claimed parentage over the child within the stipulated period. As it stands therefore, the child is in need of alternative care and parental attention in a family environment. In light of the aforesaid, this Court is satisfied that there are special circumstances arising to warrant the grant of the present Application.

Based on the material before the Court, the Applicant was assessed by the *guardian ad litem*, H N M, and Little Angels Network and was found to be suitable to adopt. According to the materials availed, the Applicant is financially and socially capable of providing for the child's needs. She is a Dental Surgeon and a Public Health specialist working at Astradental Clinic. She has undergone medical evaluation and has been found to be of sound mind. She is a person of good conduct as evidenced by the Certificates of Good Conduct adduced to Court.

The Little Angels Case Committee sitting on 27<sup>th</sup> August, 2014 assessed the Applicant's case and approved that the Applicant does adopt one female child however, that did not happen. Subsequently, the Applicant applied for a review of that decision and in its sitting on 6<sup>th</sup> February, 2015, the Committee approved her placement with the child herein, who was by then aged between 18 to 36 months, under the

guidelines on special circumstances specifically by dint of Clause 5 which is to the effect that the Applicant was the only person available to adopt the child. The Committee found the Applicant suitable to adopt the child and issued a Certificate declaring the child free for adoption. One, S N M and M W W have both consented to being the child's legal guardian, as per their Letters of Consent, in the event that anything happens to the Applicant. In addition, Little Angels Network issued a Certificate of Declaring the child herein free for adoption.

According to the Children's Officer's Report of 20<sup>th</sup> June, 2016, the Applicant has fulfilled the legal requirements for adoption and has proved capable of taking on parental responsibility over the child in this matter during the statutory placement period prior to the adoption during which he has been under their continuous care and control. Further, she is physically and mentally fit and can be entrusted with the minor for adoption and she is financially capable of bringing up the minor as she has a stable source of income. The Report also indicates that the child has bonded well with the Applicant and the home environment in which he is being raised in is conducive.

The Court finds that the Applicant has met the criteria of local adoptions and it would be in the child's best interest if he was adopted. The Court grants the orders that the Applicant shall assume the responsibilities of a parent to the child. The child shall be entitled to inherit from the property of the Applicant and shall not be given up because of any eventualities that might result.

In conclusion, it is in the best interest of the child herein as he is going to have a home and a family with a secured future, with his education and wellbeing safeguarded.

#### **DISPOSITION**

The Applicant, L N M, is hereby authorized to adopt the child, C H. The child shall henceforth be known as C M W. He is therefore presumed to be a Kenyan Citizen by birth and thereby accorded all the entitlements of a Kenyan citizen. S N M of P.O Box 11143-00400, Nairobi, and Mary W W, of P.O Box 8098-00100, are hereby appointed to be the legal guardians of the child should any misfortune befall the Applicant. The Registrar General is hereby directed to enter this order in the Adoption Register.

The *guardian ad litem*, H N M, is hereby discharged. It is so ordered.

**DATED, DELIVERED AND SIGNED ON THIS 8<sup>TH</sup> DAY OF DECEMBER, 2016**

**M. W. MUIGAI**

**JUDGE**

**In the presence of:**

Ms. Kosgey holding brief Ms. Mbeya for the Applicant.