



IN THE HIGH COURT OF KENYA

AT MOMBASA

ADOPTION CAUSE NO. 20 OF 2013

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

AND

IN THE MATTER OF ADOPTION OF BABY L T

AND

IN THE MATTER OF AN APPLICATION FOR ORDERS OF ADOPTION OF BABY L T BY SHIDA
B AND E M B THE APPLICANTS

JUDGMENT

The two applicants herein namely **MR. S B K** (hereinafter referred to as the 1st applicant) and **E M B** (hereinafter referred to as the 2nd applicant) have jointly filed an originating summons dated 21st September, 2013 seeking *inter alia* the following orders

“3. THAT the consent of the biological parents of Baby L T be and is hereby dispensed with since the child was abandoned at an open field within Ruiru Limited Hospital and the efforts by authorities [to trace his biological parents] have not borne any fruits.

4. THAT the applicants Mr. S B K and Mrs. E M B be allowed to adopt the child and [he] be called C B S henceforth.

5. THAT the Registrar-General be and is hereby ordered to make the appropriate entries in the Adopted Children’s’ Register in respect of baby L T.”

The application was disposed of by way of oral evidence. The court did on 5th November, 2013 approve the appointment of **MS. B M L** as the ‘*Guardian ad Litem*’. The two applicants both testified before court on 27th August, 2014. Section 156 (1) of the Children Act provides as follows

“No arrangement shall be commenced for the adoption of a child unless the child is at least six weeks old and has been declared free for adoption by a registered adoption society in accordance with the rules prescribed in that behalf.”

In this case the subject child was estimated to have been born on 27th August, 2012. He was therefore aged about 1½ years in November, 2013 when this application was filed. Annexed to the summons I have seen a certificate serial No. [particulars withheld] dated 22nd May, 2013 declaring the child free for

adoption. This certificate was issued by the 'Little Angels Network' which is a registered adoption society in Kenya. As such I am satisfied that all the legal prerequisites for this adoption have been met.

THE APPLICANTS

The applicants are a couple who are married and reside in Kilifi. They celebrated their union on 5th December, 1998 at the First Baptist Church. The 2nd applicant came into the marriage with twin daughters. However as a couple they have not borne any biological child of their own. The two daughters who are now twenty years old have left the home thus the couple seeks to adopt a boy child to complement the family. Both applicants had a normal rural Kenyan upbringing. They remain close to their families and their quest to adopt the child has been welcomed by their extended family. I did interview one of the couple's daughters S C. She confirmed that she and her sibling have consented to their parents wish to adopt and have already welcomed the child as their brother.

The applicants are both in stable employment. The 1st applicant is engaged in the construction business whilst the 2nd applicant works as a secretary at Shariani Secondary School in Kilifi. Together they earn sufficient resources to provide for the child. The couple live in their own home in Shariani-Kilifi and also have rooms for rental. They are both committed Christians and are members of Shariani Pentecostal Church. They have both exhibited certificates of good conduct from the Kenya Police proof that they have no criminal history. During their court interview each applicant confirmed that they fully comprehended the legal implications of an adoption order. They both expressed their intention to raise the child as their very own. In my opinion the applicants were a mature committed couple who have a genuine desire to provide this child with a good home. I am satisfied that the two are both suitable adoptive parents.

THE CHILD

The child whose given names are L T was found abandoned near Ruiru Hospital on 3rd September, 2012. He was only a few days old. The child was rescued by a good Samaritan who reported the matter to Ruiru police station. The child was then admitted at the New Life Home in Nairobi which is where the applicants met him. All efforts to trace the child's biological mother have failed. No person has ever come forward to claim him. By a letter dated 2nd May, 2013 the OCS Ruiru police station confirms that police have been unable to trace any child and/or relative of the child. As such there exists no known person from whom consent for this adoption can be sought and/or obtained. I therefore waive the requirement for any consent in line with section 159 (1) of the Children Act.

THE APPLICATION

Section 4(a) of the Children Act 2001 obliges a court to give priority to the '*best interest*' of a child in determining an application on adoption. I have considered all the relevant material placed before me as well as the Home Report filed by the Children Department. I note that the child has been living with the applicants for over one year. He has settled into his new home and no doubt regards the applicants as his parents. This was quite obvious even to me as I observed them. The child clearly has bonded well with the applicants and her daughters. This adoption will allow him an opportunity to grow in a loving home with a family like other children. This certainly serves the best interests of the child. I therefore authorize the adoption of this child by the applicants. I further grant prayers (3), (4) and (5) of the Originating Summons dated 21st September, 2013. No order on costs.

Dated and delivered in Mombasa this 22nd day of September, 2014.

M. ODERO

JUDGE