



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Adoption Cause 143 OF 2006

IN THE MATTER OF THE CHILDREN ACT, 2001

AND

IN THE MATTER OF BABY LM (A CHILD)

J U D G M E N T

By originating summons dated 26.09.06 and filed on 28.09.06 stated to be brought under sections 154; 156(1); 157(1); 158(1) (a), 4(a); 159(4), (6), (7), (8)(a); 160(1), (2), (4); 163; 164(1) and 170 of the Children Act, 2001 and section 24 of the Interpretation and General Provisions Act, Cap. 2, RWN and PNK applied, *inter alia*, for the following order, namely:—

THAT the applicants be authorized to adopt BABY LM , to be known as LTN.

At the hearing of the application, the applicants were represented by learned counsel, Miss L.W. Kigwatha.

The applicants, both Kenyans, are wife and husband, respectively, having got married to each other on 03.08.96 at the P.C.E.A. Dagoretti Parish, Nairobi under the African Christian Marriage and Divorce Act, Cap. 151. Regulation 19 (d) of the Children (Adoption) Regulations, 2005 (L.N. No.43 of 2005) is to the effect that adopters, in the case of joint applicants, should have been married for at least three years prior to the date of commencement of adoption arrangements. This requirement has been met.

The 1st applicant, RWN was born in 1969 and is aged around 38 years. The 2nd applicant, PNK was born in 1968 and is aged around 39 years. The child to be adopted, LM is estimated to have been born on or about 09.08.03 and is aged about 4 years. Section 158(1)(a) of the Children Act is to the effect that for the applicants to qualify as adoptive parents, they or at least one of them should have attained the age of 25 years and be at least 21 years older than the child but should not have attained the age of 65 years. These statutory age requirements have been met.

There is in the court file a report by four residents of Jamhuri Estate Block CF 1/11-12, Mary Semhe, Jackson Washuga, Mary Ondiek and Mrs. Misoi dated 09.08.03 to the effect that at around 5.00 a.m. on 09.08.03 they heard intermittent cries of a baby from an unidentifiable location within the neighbourhood. Later they noticed dogs howling around a bushy area of a nearby field. Children in the estate noticed bloody clothes around the area and drew the attention of the four residents to the matter. At around 2.00

p.m the said residents noticed the baby abandoned, and they quickly arranged to clothe the baby, an African girl, and took her to Ushirika Clinic, Kibera for necessary attention. The matter was reported to the police and the child was eventually committed to New Life Home Trust for foster care. Ultimately the child was placed in the applicants' foster care on 02.06.04 and they have fostered the child ever since.

The 1st applicant gave oral evidence before me. She said she is employed by the Consolidated Bank as a Tea Girl earning Kshs.32,000/= per month. She also said the 2nd applicant, i.e. her husband, is a Primary School Teacher earning Kshs.15,000/= per month. The applicants have one biological child, a boy, aged around 8 years. Owing to some medical problem, the 1st applicant is unable to conceive again. Coincidentally, she had a desire to help a needy child even before her medical problem arose, a desire her husband also shared. The 1st applicant said she has an attachment to children and in that context she used to visit Children's Homes. That is how she came to meet the subject child and fell in love with her. Both she and her husband (2nd applicant) agreed to adopt the child, hence the present proceedings. The applicants also have a semi-permanent 3 bed-roomed house from which they get rent of Kshs.3,000/= per month. The applicants grow crops and keep poultry for domestic consumption. They are Christians and intend to bring up the child in the same faith. The applicants have reasonable means and have demonstrated requisite commitment to cater for the welfare of the child to be adopted.

Child Welfare Society of Kenya, a registered adoption society in Kenya, has declared the child free for adoption.

The guardian *ad litem*, WK has recommended the proposed adoption. She also informed the court that she and KKK have offered to act as the child's legal guardians in the event of the applicants' passing away. This court adds that the undertaking to be the child's legal guardians has to last until the child attains majority age, and the said undertaking is accepted on that basis.

The Director, Children's Services has reported that bonding has taken place between the subject child and the applicants as well as between the subject child and the applicants' biological son. The Director too has recommended the proposed adoption.

I am satisfied on evidence tendered before court that the applicants meet requisite legal requirements and social parameters for adoptive parents; that the applicants are fit and proper persons to adopt the child; and that it is in the child's best interests to be adopted by the applicants. Accordingly, I make an order under section 154(1) of the Children Act, 2001 authorizing the applicants, RWN and PNK to adopt BABY LM who shall henceforth be known as LTN.

The Registrar-General is directed to make appropriate entries in the Adopted Children Register as required by law.

Orders accordingly.

Delivered at Nairobi this 23rd day of January 2008.

B.P. KUBO

JUDGE