



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT**  
**MILIMANI LAW COURTS**  
**IN THE MATTER OF CHILDRENS ACT NO. 8 OF 2001**  
**AND**  
**IN THE MATTER OF HN(AN INFANT)**

**JUDGMENT**

Before me is an Originating Summons dated 26<sup>th</sup> September 2005 filed by Waiguru Njuguna & Company advocates on behalf of the applicants FJT and TBT. The Originating Summons is for the adoption of a male infant HN.

The Originating Summons was filed with a Statement of the applicant as required by law. In the statements it is stated that the infant was born on 28<sup>th</sup> June 2004, and the applicants found the infant at New Life Home. That the applicants are husband and wife born on 8<sup>th</sup> March 1974 and 19<sup>th</sup> August 1973 respectively and both reside at House No. 56 Golf Course Phase I, Nairobi. That the applicants are American citizens having resident status and having live for almost two years in Kenya, and intend to reside in Kenya indefinitely. The infant was put under their care on 26<sup>th</sup> April 2005. They intend that the infant, on adoption be know as LTT.

The infant was declared free for adoption by the Little Angels Network adoption society. On 17<sup>th</sup> March 2006 the court appointed BARBARA ROADKNIGHT as the guardian ad litem. Reports were subsequently filed by the guardian ad litem, the Director of Children Services of Kenya

Little Angels Network. A recommendation from Bethany Christian Services a licenced international adoption agency in Michigan was also filed together with a copy of a validation of the recommendation by Bethany Christian Services by the American Embassy in Nairobi dated 15/11/2006.

I also heard oral evidence from BARBARA ROADKNIGHT the guardian ad litem, STEVE KARIITHI from the Little Angels Network, and JACINTA ACHIENG OMONDI, from the Kenyan Directorate of Children Services. They also recommend the adoption. However, the Director of Children Services asked the court to be satisfied that the consents for the adoption of the child have been given.

I have considered the documents filed and the oral evidence. The child was born to RAA out of what is described as an incestuous relationship under Luhya customs. It was the grand mother of the child by the name FAA who signed the consent for the adoption. The mother of the child was 15 years old when the child was born on 28/6/2004. On 28/8/2004 the grandmother of the child FAA who was the guardian of the minor mother of the child gave consent for the adoption. On Little Angel's Network adoption society declared the child as free for adoption.

Consent for the adoption of an infant is a requirement of law, unless dispensed with by the court as provided for under the Children Act No. 8 of 2001. Consent in the case of a child who was born by a mother who is an unmarried minor is covered under section 158 (4) (b) of the Act, which provides –

“58 (4)(b) in case of a child, born out of wedlock whose mother is a child with the consent of the parents or guardian of the mother of the child”

In our present case, the grandmother of the infant to be adopted appears to be the guardian of the mother of the child. The mother of the child is still less than 18 years of age, and was so when the consent was given and that the child is free for adoption.

Considering the facts of the whole case I am of the view that this is a justifiable case for the adoption of the infant. The applicants have of their own volition opted to adopt the infant. The infant was born out of an incestuous relationship under Luhya traditions and customs and cannot be accepted in the family in which he was born. The applicants are husband and wife, Americans, currently resident in Kenya. They have the means to take care and bring up the child. They fulfill both the legal and social requirements for legal adoption. The infant has blended or bonded in the family of the prospective adopters.

I am of the view that the propose adoption will be in the best interests of the infant. It will provide him with a family to grow up in, and be cared for outside the Luhya traditional taboo for a child born outside an incestuous relationship. Consequently, I will grant the orders for adoption.

For the above reasons, I allow the Originating Summons for adoption and order as follows –

1. That the applicants FJT and TBT be and are hereby authorized to adopt the infant HN to be known as LTT.
2. I direct the Registrar General to make an entry of this adoption in the Adopted Children register in the prescribed form.

Dated and delivered at Nairobi this 2<sup>nd</sup> day of May 2007.

George Dulu

**Judge**

In the presence of –