



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**FAMILY DIVISION**

**ADOPTION CAUSE NO. 139 OF 2019**

**IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001 AND THE ADOPTION RULES**

**AND**

**IN THE MATTER OF ADOPTION OF BABY L alias LA (THE CHILD)**

**AND**

**IN THE MATTER OF AN APPLICATION OF ADOPTION BY DMK**

**JUDGMENT**

(1) Before Court is the Originating Summons dated **13<sup>th</sup> September 2019** by which the Applicant **DMK** seeks the following orders:-

**“1. THAT DMK be authorized to adopt the child: BABY L a.k.a LA who is presumed to be a Kenyan citizen born on the 21<sup>st</sup> day of September 2016.**

**2. THAT upon adoption the child be known as EKM.**

**3. THAT DKK of Kenya National Identity Card Number [...] be appointed as Legal Guardian of the child: BABY L a.k.a LA.**

**4. THAT the Registrar General be directed to enter this adoption into the Register of Adoptions and a subsequent Birth Certificate do issue by the Registrar of Births and Deaths.”**

(2) The application was canvassed by way of viva voce evidence. The parties appeared before Court via the online platform on **28<sup>th</sup> January 2021**.

(3) The Applicant was a single woman who has never been married and has no child of her own. She told the Court that she works as an Accountant with **[Particulars Withheld]**. The Applicant seeks to adopt the subject-child who has been living with her since **2017**.

(4) The Applicant told the Court that she was motivated to adopt the child as a way of giving back to society and due to her desire to provide a needy child with a home. The Applicant stated that her family are aware of and support her plans to adopt the child. The Applicant confirms that she understands the legal implications of an adoption order and undertakes to accord to the child all the rights due to a biological child including the right to inherit.

(5) **PW2 JM** had been appointed as Guardian Ad Litem in this matter. She filed in Court her report dated **25<sup>th</sup> June 2020** in which she recommended the adoption.

(6) **PW3 MR. FRANCIS NDELEKA** is an Officer from **Child Welfare Society of Kenya ('CWSK')**, the Adoption Agency that declared the subject child Free for Adoption. He produces the Report of the Adoption Agency dated **21<sup>st</sup> January 2019** recommending the adoption.

(7) **PW4 MR. EZEKIEL KIMANI** is a Principal Children's Officer. He produces the Report dated **17<sup>th</sup> June 2020** compiled by the Department of Children's Services which also recommends that this Adoption application be allowed.

**ANALYSIS AND DETERMINATION**

(8) I have considered the evidence adduced in open Court as well as the various Affidavits and Reports filed in this matter. The Preliminary requirements for the making of an Adoption Order are set out in **Section 156(1)** of the **Children's Act** which provides as follows:-

**“159(1) No arrangement shall be commenced for the adoption of a child unless the child is at least six (6) weeks old and has been declared free for adoption by a Registered Adoption Society in accordance with the Rules prescribed in that behalf.”**

(9) The subject child was born on **21<sup>st</sup> September 2016** at **Arrow Web Hospital** in **Kayole**. The child is now about **4<sup>1/2</sup> years old** and is above the **six (6) week** age limit provided for in the Act. The **CWSK** which is a Registered Adoption Agency have annexed to their Report the original copy of the Certificate Serial No. [...] dated **28<sup>th</sup> April 2017** declaring the subject-child Free for Adoption. I am therefore satisfied that all the prerequisites for adoption have been met.

(10) The Court is obliged to assess the suitability of the Applicant as an adoptive parent. The Applicant is a Kenyan citizen as evidenced by the copy of her Kenyan National Identity Card No. [...] which is annexed (Annexure **'DMK 1'**) to the Summons. The Applicant has never been married and does not have a biological child of her own. She told the Court that she desires to adopt a child in order to provide a home for a needy child.

(11) The Applicant is currently in a stable employment, working as a Finance Officer with [**Particulars Withheld**] (**'xxxx'**). Annexed to the Summons is a copy of the Applicant's Letter of Appointment (**'DMK 3'**). The Applicant has also annexed several copies of her pay-slip at (**pages 24-26** of the Summons) as well as copies of Bank statements in respect of her Bank account held with **Barclays Bank Limited**. (See **pages 29-32** of the Summons). A perusal at the Applicants financial documents reveal that she makes a comfortable living and is financially well able to provide for the child.

(12) The Applicant also owns her own home, a three bed-roomed house in **Kiambu County**. She has also put up rental rooms in the same plot from which she earns rental income. The Applicant has annexed a copy of the Title Deed to the said property in which she is named as the Registered Proprietor (**page 27** of the Summons).

(13) The Applicant is in good mental and physical health. She has annexed copies of a medical evaluation conducted by a **DR. L. M. MBUTHIA** a Consultant in Nanyuki. (Annexure **'DMK 4'**). She has also annexed to the Summons a copy of a Clearance Certificate issued to her by the **Kenya Police Service** (see **page 34** of the Summons) indicating that she does not have a criminal record.

(14) The Applicant told the Court that her family approve of her intention to adopt the child and that they have already embraced the subject child as one of their own. The Applicant has appointed her sister **DMK** as Legal Guardian for the child. All in all from the material placed before me I am satisfied that the Applicant is a suitable adoptive parent.

(15) The subject-child is a girl child who is now about **4<sup>1/2</sup> years old**. The child was born on **21<sup>st</sup> September 2016** at **Arrow Hospital in Kayole, Nairobi** in the **Republic of Kenya**. This is proved by the Notification of Birth Serial No. [...] dated **21<sup>st</sup> September 2016** (Annexure **'DMK 1'**).

(16) Due to the fact that the child was the result of an incestuous relationship between siblings she was deemed to be a taboo child and would not have been accepted in her community. The biological mother therefore made the decision to give up the child for adoption even before the child was born. The family approached **CWSK** to facilitate the adoption process. The child's biological mother one **LAI** signed a consent to the adoption dated **11<sup>th</sup> January 2017** (Annexure **page 38-40**) and the child's grandmother who was guardian to the biological mother also signed a consent (Annexure at **page 38** of the Summons). Both confirmed that they understood that an adoption was permanent. The biological father of the child is said to have vanished from the family home after impregnating the mother and has not been seen or heard from since.

(17) On **22<sup>nd</sup> September 2016** after her birth the child was taken to **Mama Ngina Children's Home** temporarily. Thereafter on **26<sup>th</sup> April 2017** the **Nairobi Children's Court** committed the child to **CWSK** for Care and Protection. On **18<sup>th</sup> May 2017**, the child was placed into the custody of the Applicant under a Foster Care Agreement.

(18) In deciding upon any matter involving a child Courts are obliged to give priority to the best interests of the said child. **Section 4(2)** of the **Children Act** provides:-

**“(2) In all actions concerning children, whether undertaken by public or private social welfare institutions, Courts of Law administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.” [own emphasis]**

(19) The subject-child is a child who was unwanted in the community into which she was born. She has found love and acceptance with the Applicant. The child has been living with the Applicant since **May 2017**. She views the Applicant as her mother. I was able to see and interview the child online. She was a bright articulate little girl. She confidently stated her name and told the Court which school she attends. I observed that the child looked healthy and well cared for and has clearly bonded well with the Applicant.

(20) A home visit was conducted by the Adoption Agency as well as by the Children's Department. Both reported that the Applicant lived in her own spacious three bed-roomed home in **Kiambu County**. The Applicant also has a rental home in **Nanyuki** where she works and has enrolled the child in school in there. The Applicant has employed a Nanny to help with the care of the child.

(21) The Applicant has appointed her sister **DK** as the Legal Guardian for the child. Her sister has consented to act as Legal Guardian in the event the Applicant is unavailable or unable to care for the child (see signed consent at **page 50** of the Summons).

(22) As stated earlier this is a child who was unwanted and rejected by her own family. She has found acceptance with the Applicant and her family. The child who would have faced an uncertain future in Children's Homes and Institutions, now has the opportunity to be raised in a loving and secure family environment. This in my view certainly serves the best interests of the child.

(23) Accordingly I allow this application for adoption and I make the following orders:-

- 1) The Applicant **DMK** is authorized to adopt **BABY L a.k.a LA**.
- 2) Upon adoption the child will be known as **EKM**.
- 3) **DKK** is appointed as the Legal Guardian of the child.
- 4) The Registrar General is directed to make the relevant entry in the Adopted Children's Register.
- 5) No orders on costs.

**Dated in Nairobi this 5<sup>th</sup> day of March, 2021.**

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**MAUREEN A. ODERO**

**JUDGE**