



**REPUBLIC OF KENYA**

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

**ADOPTION NO. 9 OF 2020**

**IN THE MATTER OF BABY L K**

**LGH**

**EFW.....APPLICANTS**

**AND**

**THE CHANGE TRUST ADOPTION SOCIETY.....RESPONDENT**

**JUDGMENT**

1. Through an Originating Summons dated 14<sup>th</sup> September, 2020 LGH and EWF hereinafter the first and second applicant respectively moved this court pursuant to Sections 11, 154, 156, 158, 159, 160, 163 and 164 of the Children Act and Article 14(4) of the Constitution seeking orders that; the minor herein be declared a Kenya citizen; consent pursuant to Section 159 of the Children Act be dispensed with; they be authorized to adopt the minor herein.; JCM and SDM be appointed as legal guardians of the minor; upon adoption, the minor be known as LKH, and upon making the adoption order, the same be entered in the adopted children's register by the Registrar General.
2. The application is supported by a statement of particulars jointly sworn by the applicants on 14<sup>th</sup> September, 2020 in which they stated that; they are Kenyan citizens by birth having been born on 1974 and 1975 respectively; they are engaged in a monogamous marriage celebrated on 29<sup>th</sup> November, 2002 at Soul Harvest Ministries in Mombasa and, that they are also ready and willing to adopt the minor herein.
3. The first applicant is a holder of a bachelor's degree in business Administration. He is currently working with [Particulars Withheld]. On the other hand, the second applicant is a fashion designer by profession currently running her own shop within Mombasa CBD where she is doing dress making, fabric design and tailoring.
4. Despite contracting their marriage on 14<sup>th</sup> November 2003, they have not managed to get a child/children of their own due to the second applicant's medical complications. Their motivation to adopt has been propelled by the desire to fill their family and also to give a needy child a life in a family.
5. Concerning the subject herein, he was on 13<sup>th</sup> June, 2017 found having been abandoned at Ponya Maternity and medical Centre Githurai. Consequently, an alarm was raised and police officers from Kimbo police station responded. The incident was reported vide OB No. [...] and the minor referred to New Life Home trust for protection and care.
6. He was formally committed to the said home on 19<sup>th</sup> January, 2018 vide Nairobi Children's case No 523/2018. Every effort made to trace the minor's parents and or relatives did not bear any positive results. This is evidenced by Githurai Kimbo police station's initial and final confirmation letters dated 13<sup>th</sup> June, 2017 and 14<sup>th</sup> December, 2017 respectively.
7. Six months having lapsed since the abandonment report was made; the child was subjected to adoption process. Via its case committee meeting held on 23<sup>rd</sup> November, 2018, the baby was declared free for adoption and a freeing certificate S/No 0367 issued to that effect by Buckner Kenya Adoption Services. Consequently, the instant proceedings commenced to legalize the adoption process. Vide a Chamber Summons dated 14<sup>th</sup> September, 2020, MMM was on 16<sup>th</sup> December, 2020 appointed as guardian Ad litem to the baby and directed together with the Director Children Services to file their respective social inquiry reports within 45 days.
8. Prior to the hearing, the Director Children Services filed his report dated 22<sup>nd</sup> February, 2021 thus recommending the adoption. Equally, the guardian Ad litem filed his on 5<sup>th</sup> February, 2021 also recommending the adoption. In the same vein, Buckner Kenya recommended the adoption through its report dated 23<sup>rd</sup> November, 2020.

9. During the hearing, the applicants expressed their desire to adopt the baby. They acknowledged the fact that the adoption is permanent and that they do appreciate its consequences.

10. I have considered the application herein, evidence by various witnesses and materials placed before court for consideration. My responsibility is to determine whether the baby is legally available for adoption; whether the applicants are suitable to adopt the baby and, whether the adoption is in the best interests of the child.

11. The subject is a case of abandonment by an unknown person at Ponya maternity Medical Center. Necessary investigation by the police, Kimbo police station and Buckner Kenya Adoption services have not borne any fruit. This is clear from the police department Kimbo police station's initial and final letters aforesaid that nobody has laid claim over the baby. To that extent, the requirement for consent pursuant Section 159 of the Children Act is dispensed with.

12. Regarding his national status, Article 14 (4) of the Constitution has a cure. According to that provision, a child found in Kenya who is, or appears to be less than eight years of age and whose nationality and parents are not known is presumed to be a citizen by birth. To that extent, the child who is presumed to have been born on 1<sup>st</sup> June, 2017 is declared a Kenyan citizen by birth.

13. Pursuant to Section 157 of the Children Act, any child who is resident within Kenya may be adopted whether or not the child is a Kenyan citizen or was not born in Kenya. Besides this provision, the child who is above six weeks in compliance with Section 156 of the Children Act has been declared free for adoption in accordance with Section 157 of the said Act. He has also been under the care and control of the applicants since 18<sup>th</sup> January, 2019 in compliance with Section 157 of the Children Act. In view of the above compliance, it is my finding that the baby is legally available for adoption.

14. As regards the applicants' suitability, they are adults born in 1974 and 1973 respectively. In terms of age, they are above 25 and below 65 years being the recommended age bracket for adoptive parents in compliance with Section 158 of the Children Act. They have been described by all stake holders as responsible, caring and loving, financially stable with a combined monthly income of Ksh140,000, Christians with no criminal record and physically and mentally fit.

15. The applicants have acknowledged that the adoption is permanent and that they are aware of the consequences including the child's right to inherit their property. Being Kenyan citizens and considering that this is a local adoption, I am satisfied that they have met the requisite conditions for adopting the minor.

16. Is the adoption in the best interests of the minor? This is the most crucial consideration before an adoption order can issue. Under Article 53 (2) of the Constitution and Section 4 (2) (3) of the children Act, the court is enjoined to take into account the paramount principle of a child's best interests as the cardinal consideration before making any decision affecting a child. This is further emphasized by Article 3 (1) of the United Nations Convention on the rights of the child which provides;

**“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 should be a primary consideration”.**

17. In the instant case, the child was found having been abandoned inside a medical facility. Nobody has turned up to claim the baby. Since June, 2017, the child has found warmth in the applicants' hands. He is enjoying provision of basic necessities like food, medical care, education, shelter and clothing. Like any other normal growing child, he needs mentorship, love and care, parental guidance and counselling. He is assured of generational identity and something to inherit should he survive his adoptive parents. By all means the adoption herein is in the best interests of the minor. Accordingly, I am persuaded and inclined to allow the application and make orders as follows;

**(1) That the applicants herein LGH and EWF are hereby allowed to adopt baby LK who henceforth shall be known as LKH**

**(2) That the child's date of birth shall be 1<sup>st</sup> June, 2017 and place of birth Githurai Nairobi Kenya.**

**(3) That the consent of the biological parents is dispensed with.**

**(4) That the child is declared to be a Kenyan citizen.**

**(5) That the Registrar General is directed to enter the adoption in the adopted child's register.**

**(6) The guardian Ad litem is discharged.**

**(7) That JCM and SDM are hereby appointed as legal guardians to the child in the event of any eventuality befalling the applicants.**

**Dated, signed and delivered virtually at Mombasa this 14<sup>th</sup> day of April 2021.**

**J. N. ONYIEGO**

**JUDGE**