



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

ADOPTION NO. 9 OF 2019

IN THE MATTER OF BABY L T

ANK

CNM.....APPLICANTS

AND

BUCKNER KENYA ADOPTION SERVICES.....RESPONDENT

JUDGMENT

1. Pursuant to Sections 11,154,156,157,158,159,160,161 and 164 of the Children Act and Article 14 (4) of the Constitution ANK and CNM came to this court by way of an Originating Summons dated 14th January,2019 seeking orders as hereunder;

(1) That they be authorized to adopt baby LT

(2) That the court be pleased to declare baby LT as a Kenyan citizen by birth.

(3) That the court be pleased to dispense with consent to the adoption as required under Section 158 and 159 of the Children Act.

(4) That upon making the adoption order, the child be known as WKMN

(5) That upon making the adoption order FCM and BO be appointed legal guardians of the child.

(6) That upon making the adoption order, the Registrar General do make an entry recording the adoption and

(7) That the date of birth of the minor be 15th February, 2018.

2. In support of the application, the applicants filed a statement of particulars jointly sworn on 14th May, 2019 stating that; they are adult Kenyan citizens born on 19th November, 1985 and 6th October 19. Respectively; they are ready and willing to adopt the child; they have no biological children and that they took possession of the minor on 10th November, 2018.

3. Professionally, the first applicant is an IT expert currently working with Z as a project manager in the technical team. On the other hand, the second applicant is an online expert writer currently on self-employment.

4. The couple has not been blessed with any biological child despite having a clean medical bill from their doctor. Their motivation to adopt the baby has been prompted by the desire to have a complete family, to be parents, to share their love with a child who is legally theirs and also to get a heir.

5. Concerning the baby, he was found abandoned in a coffee plantation at Mbiruini village on 24th February,2018. Members of the public who found the baby estimated to have been 2 weeks old informed the area Assistant chief who escalated the matter by reporting at Kianyaga police station where the incident was booked vide OB No. [...]. The minor was then admitted at Kianyaga Sub county hospital for medical attention following an infection.

6. On 5th March, 2018, the child was admitted at New Life home trust pursuant to a formal committal order in P&C case No 2/2018 Gichugu Law courts. Through their letter dated 15th October, 2018 police officers Kianyaga police station confirmed that nobody had turned up to

claim the baby.

7. After the expiry of six months, the process of adoption commenced. The child was eventually declared free for adoption on 26th October, 2018 by Burckner Kenya Adoption services and a freeing certificate S/No. [...] issued.

8. Upon filing the Originating Summons herein, BOA was appointed as a guardian Ad litem pursuant to a Chamber Summons dated 14th May, 2019. The Director Children Services and guardian Ad litem were directed to file their social inquiry reports.

9. Preceding the substantive hearing proceedings, the Director Children Services, guardian Ad litem and Buckner Kenya filed their respective social inquiry reports dated 5th October, 2019, 10th February, 2019 and 3rd September, 2019 thus recommending the adoption. The said stake holders described the applicants as Christians with no criminal record, financially stable having a combined monthly income of over Ksh 300,000, loving and caring, physically and mentally fit.

10. During the hearing, the applicants urged the court to consider and grant their prayers. They confirmed that they understood the consequences of adoption and that it was permanent.

11. I have considered the application herein, materials in support and testimonies by various witnesses. Issues that emerge for determination are; **Whether the minor is legally suitable for adoption purposes; Whether the applicants have met the requisite requirements to adopt the baby; Whether the adoption is in the best interests of the child.**

12. The baby herein was found in a coffee plantation. At the time, he was estimated to have been about 2 weeks old. Obviously, the intention for the abandonment was not to safeguard his life but to expose him to danger and possibly death.

13. Despite every effort to trace the minor's parents or relatives, nothing fruitful has been forthcoming. This is confirmed through the police department Kianyaga police station as evidenced from their aforesaid letter. In the absence of any relative or claim over the baby, the need for consent in compliance to Section 158 and 159 of the children Act is dispensed with.

14. Touching on the question of his nationality, Article 14 (4) of the Constitution is the source of protection. Under this provision, any child found in Kenya when below 8 years and whose parents or nationality is not known is presumed to be a Kenyan by birth. In the circumstances of this case, the child is deemed to be a Kenyan given his age and circumstances under which he was found.

15. Besides, Section 157 of the Children Act also does recognize any child residing in Kenya whether born in Kenya or not as eligible for adoption. Considering that the baby was abandoned the year 2008 without anybody laying claim over him, declared fit for adoption on 26th October, 2018 and placed under the care and control of the applicants on 10th October, 2018 for a mandatory period of 3 consecutive months, I am satisfied that the child is legally available for adoption.

16. Concerning the suitability of the applicants, they are Kenyan citizens aged between 25 and 65 years thus satisfying the requirement under Section 158 of the Children Act. They have been described as financially stable, responsible, caring, Christians and understands the consequences of adoption. This being a local adoption, I am satisfied that they have satisfied the requirements to adopt the baby.

17. Regarding the crucial factor in considering an adoption case, the court is duty bound to determine whether the adoption is in the best interests of the child pursuant to Article 53 (2) of the Constitution. Further, Section 4 (2) and (3) of the Children Act in collaboration with Article 3 (1) of the United Nations Convention on the rights of a child, the court is guided by the best interests principle of a child as a paramount or primary consideration before granting the adoption.

18. In this case, the baby was abandoned in the bush. Nobody has come forward to claim him. By inference, the conduct of the parent or whoever abandoned him was to expose the child to danger or death. He has since found a warm and welcoming home. He has been enjoying parental love and continues to enjoy basic necessities like food clothing, medical care, shelter and parental guidance. By all standards, the child is happy.

19. The child has been assured of inheritance and generational identify. He has fully bonded with the adoptive parents. I have no doubt, the adoption is in the best interests of the child. Accordingly, I am persuaded to allow the application with orders that;

(1) The applicants are allowed to adopt baby LT who hereafter shall be known as WKMN

(2) That the child's date of birth shall be 15th February, 2018 and place of birth Kianyaga Kirinyaga County Kenya

(3) That the consent of the biological parents and or relatives is dispensed with.

(4) The child is declared as a Kenyan citizen

(5) The Registrar General is directed to enter the adoption in the adopted children's register.

(6) The guardian Ad litem is hereby discharged.

(7) FCM and BO are hereby appointed as legal guardians to the minor in the event of death or incapacitation befalling the applicants.

DATED SINGED AND DELIVERED VIRTUALLY AT MOMBASA THIS 14TH DAY OF APRIL, 2021

J N ONYIEGO

JUDGE