



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MALINDI**  
**ADOPTION NO 1 OF 2018**  
**IN THE MATTER OF CHILDREN ACT NO 8/2001**  
**IN THE MATTER OF ADOPTION ORDER**  
**IN THE MATTER OF ADOPTION OF – C.N**

**SSN and LSN.....APPLICANTS**

**VERSUS**

**CWSK.....RESPONDENT**

**Coram: Hon. R. Nyakundi**

**K. Lughanje & Co Advocates**

**RULING**

SSN and LSN are the common applicants in this adoption caused seeking Leave of the court to adopt one CN herein and further appoint HKM as a guardian *ad litem*. The application is supported by the reasons on the face of the originating summons and supporting affidavit dated 9.3.2018.

**Background**

It is stated in the application that the applicants identifying themselves as Kenyan citizens and resides in Kilifi cohabit together as husband and wife. The applicants have no biological children of their own and their motivation is to have an opportunity to bring up the minor as adoptive parents under the children's Act. The applicants are in gainful income earning activities to meet the special needs of the minor. The applicants have also deposed that they have no blood relation with the minor nor been convicted of any criminal offence known in law. They came to learn about the child's plight and circumstances through CWSK Mji wa Salama and the child welfare of Society of Kenya, a child rescue centre and adoption agency both have a working relationship with the Director of children services. The antecedents of the minor to be adopted is clear from the child welfare Society of Kenya and the rescue center. The grounds for the adoption of the minor are also clear in the application and they are summarized in both the child Welfare Society of Kenya and the inquiry report by the Director of children Services. All what those reports indicate or demonstrate the applicants are suitable and legally eligible to adopt the minor under the children Act.

Therefore, having considered the application, the corresponding affidavits and inquiry reports what comes to my mind is whether the applicants herein do qualify to be appointed as adoptive parents of the minor.

**Determination**

The predominant principle in adoption application is as expressed in Article 53 (2) of the Constitution to the effect that:

**“A child's best interests are of paramount importance in every matter concerning the child”.** Prior to subsection (i) of the Article the provisions in subsection (i) provides **“Every child has the right to parental care and protection, which include equal responsibility of the mother and father to provide for the child whether they are married to each other or not”**

Similarly, under Section 4 (2) and (3) of the Children Act provides as follows:

**“That 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**

**All judicial and administrative institutions, and all persons acting in the name of these institutions, where they are exercising any powers conferred by this Act shall treat the interests of the child as the first and paramount considerations to the extent that is consistent with adopting a course of action calculated to (a) safeguard and promote the rights and welfare of the child (b) Conserve and promote the welfare of the child and ( c) secure for the child such guidance and correction as is necessary for the welfare of the child and in the public interest.”**

The act further proceeds to give extensive guidance under Section 154, 155, 156, 157, 158, 159 and 160 on what the courts should consider in the decision making which of course should be consonant with Article 53 (i) and (2) of the Constitution 2010, on the cardinal principle, to secure all aspects of the welfare and best interest of the minor to be adopted.

In the instant application as adduced from the record, I hold the view that the applicants have fulfilled the criteria and requirements of the law as outlined in the above sections.

In terms of emphasis under Section 159 of the Act, where there are known parents of the minor, their consent is necessary before any adoption order is made by the court. However, in the inquiry carried out by the child Welfare Society of Kenya, an adoption agency and the Director of Children’s Services, they indicated the minor to have been abandoned. There are no other known relatives of the minor from whom consent can be sought for purposes of this order. According to Section 159 of the Act, this court dispenses with the legal requirement of consent. It is clear from the application and the evidence that the recurring question that strikes a balance between the application and the provisions of the law on the grant of adoption orders has been met by the applicants. In accordance with the constitution and Children Act, both stipulate adherent to the fundamental principles on the children’s rights and their survival christened as the welfare and best interest.

Therefore, in adoption cases the court has to be satisfied that the circumstances provided for in the application for adoption are favorable and not prejudicial to the minor. In **article 25 (i) of the African Charter on the rights and welfare of the child it provides that:**

**“Any child who is permanently or temporarily deprived of his family environment for any reason shall be entitled to special protection and assistance.**

It seems to have been the intention of our forefathers and the drafters of the supreme law of the land and its enabling legislation that the primary rights of a child to grow and develop be preserved and guaranteed by the state. This is epitomized in the words of the former **Secretary General of the United Nations, Kofi Anan** , where he remarked as follows: In a unicef address, 2001)

**“that there is no trust more sacred than the one the child holds with children. There is no duty more important than ensuring that their rights are respected, that their welfare is protected, that their lives are free from fear and want and that they grow up in peace”**

In summary, I am persuaded that this state of affairs as appertaining to the minor are such that in her best interest and welfare an adoption order do issue in favor of the applicants. Therefore, in essence and in view of what I have said above I accede to the Originating Summons by the applicants dated **9. 3. 2018** with no orders to costs.

**DATED, SIGNED AND DELIVERED AT MALINDI THIS 11<sup>TH</sup> DAY OF MAY, 2021**

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**R. NYAKUNDI**

**JUDGE**

**NB:** In view of the Public Order No. 2 of 2021 and subsequent circular dated 28th March, 2021 by Her Ladyship, The Acting Chief Justice on the declarations of measures restricting court operations due to the third wave of Covid-19 pandemic this ruling has been delivered online to the last known email address thereby waiving Order 21 [1] of the Civil Procedure Rules.

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