

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KIAMBU

ADOPTION CAUSE NO. 5 OF 2019

IN THE MATTER OF THE CHILDREN ACT, 2001

AND

IN THE MATTER OF BABY LS aka LS aka LS aka S

RWM.....APPLICANT

JUDGMENT

1. The subject of these proceedings is Baby LS, a male child, born on 20th January, 2016 at Kenyatta National Hospital (KNH) to a mother said to be from Tanzania. The mother abandoned baby LS in the newborn unit of Kenyatta National Hospital on 31st January, 2016 and never returned. Kenyatta National Hospital reported to the Kenyatta Police Post vide OB report No. 21 of 2nd February, 2016. In June 2016, the subject minor was admitted to Happy Life Children's Home and formally committed to the home in Protection and Care Case No. 147 of 2016 at the Nairobi Children's Court. Nobody came forward to claim Baby LS and efforts to trace his mother and father proved futile. Baby LS was subsequently declared free for adoption by Buckner Kenya Adoption Services vide Certificate No. [xxxx] of 7th April, 2017. On 10th April 2017, he was placed in the care of the Applicant herein, RWM who has now applied to adopt him.

2. RWM is a female aged 53 years. She ascribes to the Christian faith. She was married since 1994 to the late EKM. The two had a son JMK, now an adult and student at Kenyatta University. EKM died in May, 2013. The Applicant is therefore a widow. She has worked in different organizations and had trained as a nurse while living in the USA a while back. She retired to pursue business interests and is currently a director together with her siblings in a wire mesh production company. She also owns several landed properties which attract a combined rental income of about Kshs. 130,000/= per month.

3. Her application to adopt LS is supported by her son and extended family. Her motivation for adoption is both altruistic and personal. Besides the desire to give a home to a needy child, the Applicant desires to expand her family. Pursuant to orders of this court, the Children's Officer Thika West Sub-County filed a report. The guardian ad litem also filed a report. Both recommend the adoption as being in the best interests of the subject minor, the Children Officer noting that the subject minor has bonded well with his adoptive mother, brother, and extended family. When the Applicant's son was interviewed by the Children's Officer, he was positive about the proposed adoption and the prospect of having a brother. Although the Applicant in this case is female while the subject minor is male, the Applicant has demonstrated her suitability and capacity through her voluntary exercise of parental responsibility in respect of the older son and catering for his requirements and needs.

4. The circumstances of the case fall within the exception envisaged in Section 158(2)(b) of the Children Act and the National Adoption Committee Guidelines of January 2010 which allow for the adoption of a male subject by a female Applicant who has another biological child or children over whom the Applicant is willingly exercising parental responsibility. The Applicant herein is mature, emotionally stable, and financially capable. Although she suffers from a chronic ailment (HIV) there is no indication that the condition impedes her capacity as a parent as the condition is under control. Her older son and sister are willing to be appointed legal guardians in the event of her demise.

5. The subject minor stands to benefit from belonging in a family where he will be loved and cared for, as opposed to life in an institution. The Court is obligated to uphold the best interests of the subject minor. See section 4(3) of the Children Act. Reviewing all the available material, the Court is satisfied that the proposed adoption is in the subject's best interests and moreover that despite her chronic health condition, the Applicant is in relatively good health and qualifies for a local adoption. She has another biological child in respect of whom she is willingly exercising parental responsibility and therefore comes within the exertion provided in the National Adoption Committee Guidelines of 2010. I do therefore allow the originating summons dated 12th April 2019 in terms of prayers 1 and 2.

Delivered and signed electronically on this 7th day of May 2021.

C. MEOLI

JUDGE

In the presence of:

For the Applicant: Miss Muhanda

Applicant: N/A

Kevin Ndege: Court Assistant