



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

ADOPTION CAUSE NO. 119 OF 2019 (OS)

IN THE MATTER OF THE CHILDREN ACT, 2001

AND

IN THE MATTER OF BABY CN aka A

IN THE MATTER OF AN APPLICATION FOR ADOPTION BY

LWN.....1ST APPLICANT

SMK.....2ND APPLICANT

JUDGMENT

1. The applicants LWN and SMK are a Kenyan couple aged 59 and 65, respectively. The 2nd applicant is a lecturer at [Particulars Withheld] University while the 1st applicant is a lecturer at [Particulars Withheld] University. The parties solemnized their marriage on 15th December 2018 vide marriage certificate number [.....]. On 5th November 2019 the applicants filed the amended originating summons seeking to jointly adopt the Baby CN aka A.

2. Baby CN aka A was born on 17th March 2013 at Kenyatta National Hospital where she was abandoned by the mother. The matter was reported at KNH Police post vide Occurrence Book No. 11/16/04/2013. The child was placed at Mama Ngina Kenyatta Children Home for care and protection and committed to the Home under **Care and Protection Case No. 335 of 2013** on 16th September 2013 by the Children's Court, Nairobi. Police efforts to trace the mother or relatives of the child did not bear any fruits. The child was subsequently declared free for adoption on the 27th December 2016 vide Certificate No. **** by Child Welfare Society of Kenya. On 28th December 2016 the child was placed with the applicants for mandatory bonding before adoption.

3. The court on 11th November 2019 appointed BSW as the guardian *ad litem* and ordered her to investigate the suitability of the applicants to adopt the child and to file a report within 45 days. A similar report was sought from the Director of Children Services. The Guardian *ad litem* filed her report on 23rd October 2019. She recommended that the 1st applicant be allowed to adopt the child. The Director of Children Services on the other hand filed his report on 19th December 2019. He stated that the 2nd applicant had already attained the age of 65 years and as such the adoption was prohibited by **section 158(2)(c)** of the **Children Act**. He recommended adoption by the 1st applicant as she fell within the statutory age bracket.

4. **Section 158** of the **Children's Act** provides that;

“(1) An adoption order may be made upon the application of a sole applicant or jointly by two spouses where the applicant or at least one of the joint applicants;

(a) has attained the age of twenty-five years and is at least twenty-one years older than the child but has not attained the age of sixty-five years; or

(b) is a relative of the child; or

(c) is the mother or father of the child.

(2) An adoption order shall not be made in favour of the following persons unless the court is satisfied that there are special

circumstances that justify the making of an adoption order—

(a) a sole male applicant in respect of a female child;

(b) a sole female applicant in respect of a male child;

(c) an applicant or joint applicants who has or both have attained the age of sixty-five years;

(d) a sole foreign female applicant.”

In the instant case the 1st applicant is 65 years while the 2nd applicant is 59 years. **Section 158 (1)** is clear that the application may be made jointly by two spouses where the applicant or **at least one of the joint applicants** has not attained the age of 65 years which is the case here.

5. The court finds that it is in the best interest of the child to be adopted by the applicants. The applicants have demonstrated their ability to provide a conducive home and family environment in which the child will grow and develop. They will assume all parental rights and obligations of the biological parents of the child once adopted, and shall treat her as if she was born to them. They have been made aware that once the adoption order is made, it shall be final and binding during the lifetime of the child. The child shall have the right to inherit their properties. The applicants shall not be able to give up the child owing to any subsequent unforeseen behaviour or other changes in the child. This court dispenses with the consent of the child's parents because the child was abandoned.

6. Having been satisfied that all the legal requirements for a local adoption under the **Children Act** have been met, the following orders shall issue:-

a) the applicants LWN and SMK are hereby allowed to adopt Child CN aka A.;

b) CN aka A shall henceforth be known as JKM;

c) the child shall be presumed to be Kenyan by birth having been found abandoned at Kenyatta National Hospital;

d) NK and JNK are hereby appointed to be the child's legal guardian in the event of death or incapacity of the applicants before she is of full age and fully self-reliant;

e) the Registrar-General is directed to enter this adoption in the Adopted Children Register; and

f) the guardian *ad litem* is hereby discharged.

DATED and DELIVERED at NAIROBI this 3RD day of DECEMBER 2020

A.O. MUCHELULE

JUDGE