



REPUBLIC OF KENYA

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IN THE HIGH COURT OF KENYA

AT HOMA BAY

ADOPTION CAUSE NO.2 OF 2018

IN THE MATTER OF CBA.....THE CHILD

BETWEEN

LAMAPPLICANT

AND

CBA appearing through LITTLE ANGELS

NETWORKGUARDIAN AD LITEM

RULING

1. An adoption order respecting the subject child, **CBA**, is hereby sought by **LAM**, vide her application dated 3rd May 2018, presented on her behalf by **G.S. Okoth & Co. Advocates**. The grounds in support of the application are contained in her statement dated 3rd May 2018, duly adopted in her supporting affidavit deponed by herself on the 3rd May 2018 and consented to by her two adult biological children namely: **COM** and **MAO**.

2. The documents accompanying the application indicate that the subject child was found abandoned at [particulars withheld] in Kakamega on the 7th November 2014. The necessary report was made to the local police and the children's office and on 15th October 2015, the child was committed into the legal custody of the children Transformation Project vide an order of the court in Protection and Care case No.380 of 2015 at the Chief Magistrate's Court in Kakamega.

On the 17th June 2016, the Adoption Society, **Little Angels Network**, cleared the child for adoption on the basis that she was an abandoned child in need of alternative family care in order to benefit from family love, care and provision as opposed to being under institutional care.

Most important, the society opined that adoption would be in the child's best interest.

3. A report by the Homa Bay Children's Office dated 25th March 2019 also recommended adoption for the child and indicated that the applicant herein would be suitable to undertake that legal obligation. Such obligation is provided for by the Children Act 2001, under its Part XII.

Section 154 (1) of the **Act**, grants the High Court the power to make adoption orders and under **Section 157 (1)**, any child resident within Kenya may be Adopted whether or not the child is a Kenyan citizen, or was or was not born in Kenya, provided that no application for an adoption order, shall be made in respect of a child unless the child concerned has been in the continuous care and control of the applicant within Kenya for a period of three consecutive months preceding the filing of the application and both the child and the applicant have been evaluated and assessed by a registered adoption Society in Kenya.

4. Herein, all the pre-requisite conditions have been fulfilled by the applicant who has been the custodian of the subject child for more than two (2) years prior to making this application. However, the adoption society Little Angels Network was wrongly enjoined as the guardian ad litem for the purposes of the child's adoption. This was contrary to the provisions of **Section 160 (3)** of the **Children Act**.

Nonetheless, the appointment of a guardian ad litem expires upon the making of a final order by the court (see, **Section 160 (4)** of the **Act**) and this court after due and careful consideration of this application do hereby order that the subject child be formally adopted by the applicant on condition that she provides the name of an adult and able relative of hers or any other responsible person with their consent to act as a guardian of the child in the event of the applicant's "**god forbid**" death or her becoming incapacitated before the child is of full age

as provided for under **Section 164 (1)** of the **Act**.

The condition be complied with within the next seven (7) days from this date hereof and in that regard matter be mentioned in court on 8th April 2019 in the presence of the applicant and the proposed guardian.

J.R. KARANAHAH

JUDGE

04.04.2019

[Read and signed this 4th day of **April, 2019**].