



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

ADOPTION CAUSE NO. 5 OF 2013

IN THE MATTER OF ADOPTION UNDER SECTION 154 OF THE CHILDREN'S ACT, 2001

AND

IN THE MATTER OF ADOPTION OF BABY L S AGED 3 YEARS

RULING

1. There are two applications to which this ruling relates. The first application is a chamber summons dated 23rd December, 2013 expressed to be brought under **Section 160** of the **Childrens Act 2001** and all other enabling provisions of the law. The applicants are praying for an order that B G of Post Office Box Number [particulars withheld] KISII be appointed the Guardian Ad Litem to BABY L S an infant aged 3 years for the purpose of updating the court about the welfare of the child.
2. The application is supported by the affidavits of Mr. G A P and Mrs. L K M. The deponents state that the intended Guardian Ad Litem has no interests that are adverse to the interests of the infant herein and further that she has expressed her willingness to act as such Guardian Ad Litem.
3. The second application is also a chamber summons of even date and also expressed to be brought under **Section 160** of the **Childrens Act, 2001** and all other enabling provisions of the law. The application is brought by the two applicants herein who seek to be appointed Guardian Ad Litem. The applicants say that the consent of the natural parents and/or relatives of the infant ought to be dispensed with by dint of the provisions of **Section 159** of the **Childrens Act 2001**. The section gives the court Powers to dispense with consents required to be given under **Section 158 (4) (a), (b) and (c)** thereof in cases of abandonment, neglect, persistent failure to maintain or persistent ill-treatment of the child or in cases where the person required to give the consent cannot be found or is incapable of giving the consent. The applicants thus aver that the infant was given to them by New Life Home Trust-Kisumu by the directors of the MOH-Kisii Level 5 Hospital.
4. The Child Welfare Society of Kenya have furnished their report dated 29th November, 2013 pursuant to **Section 177(7) (d)** of the **Children Act** of 2001. The report confirms that all efforts to trace the parents of the infant have been fruitless and consequently the infant was placed in the hands of the applicants for foster care on 25th January, 2012 pending adoption. The report urges the court to consider the infant abandoned in line with **Section 159 (1) (a)** of the **Childrens Act, 2001** which presumes abandonment **“if the child appears to have been abandoned at birth or if the person or institution having care and possession of the child has neither seen nor heard from a parent or guardian of the child for a period of at least six months.”**
5. When this matter came up for hearing on 12th May, 2014 Mr. Nyambati, counsel for the applicants submitted that he was seeking leave of the court to commence adoption proceedings.
6. The court has now carefully considered the applications as filed. It has also considered the applicable law and especially **Sections 159 and 160** of the **Childrens' Act**. From an analysis of all the above, it is clear that the infant herein was abandoned at birth; and further that the persons

whose consent is required in respect of the Adoption Case herein are unknown and cannot be traced. It is also clear from the report of the Child Welfare Society of Kenya that the infant is available for adoption once it is confirmed to the court that the said infant is free for adoption as per the rules. It is also clear from the pleadings that B G is ready and willing to be appointed Guardian Ad Litem to advise the court on the propriety of making an adoption order and monitoring the welfare of the infant during the proceedings.

7. On the basis of the above, I do make the following orders in respect of the two applications:-
1. *B G of post Office Box Number [particulars withheld] Kisii be and is hereby appointed Guardian Ad Litem to Baby L S, infant aged 3 years for the purpose of updating the court about the welfare of the infant.*
 2. *Mr. G A P and Mrs. L K M be and are hereby appointed Guardian Ad Litem in this case.*
 3. *The consent of the natural parents and relatives of the infant be and is hereby dispensed in keeping with the provisions of **Section 159** of the **Childrens' Act, 2001**.*
 4. *Parties may now fix the originating summons dated 23rd December 2013 for hearing on a date to be taken at the registry.*
 5. *Costs of these applications shall be in the cause.*

1. Orders accordingly.

Dated and delivered at Kisii this 12th day of June, 2014

R.N. SITATI

JUDGE

In the presence of:-

N/A for the Applicant

N/A for the Defendant/Applicant

Mr. E. Mongare - Court Assistant