

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**MISC. CIVIL CAUSE NO. 5 OF 2022**

**IN THE MATTER OF THE LAW OF THE CHILD ACT, CAP 13 R.E**

**2019**

**AND IN THE MATTER OF *SK* (CHILD), OF P.O.BOX 323,  
USARIVER, ARUSHA, TANZANIA**

**AND**

**IN THE MATTER OF AN APPLICATION FOR ADOPTION ORDER**

**BY *MN* AND *NNK***

14/11/2022 & 24/11/2022

**RULING**

**MWASEBA, J.**

The petitioners herein, **MN** and **NNK** (name withheld to hide identity) brought this application for an order of adoption of the child, **SK** (name withheld). Their application has been made under Section 4 (2), 55 (1) (a), 59 (1) (b) (c) (d) and 74 (2) of the Law of the Child Act, R.E 2019, Regulations 4 and 27 of the Adoption of the Child Regulations, 2011.

Briefly, the child subject for this adoption order is currently in Havillah Children Home which is an orphanage centre located in Meru District Council in Arusha Region. The petitioners who are a married couple and



nationals of the Republic of Kenya and working with and managing the above-mentioned orphanage as a volunteer director for the 1<sup>st</sup> petitioner and volunteer by profession for 2<sup>nd</sup> petitioner. It is pleaded that in 2013 the petitioners developed parents and son relationship with the child and since then to date the child has been under their care and that they have been treating and living with him as their own natural son. Thus, they have decided to take huge and potential steps by filing and presenting this petition for adoption of the child **SK**.

The application was argued orally on 14/ 11/ 2022 whereby Mr Robert Mgoha, learned counsel appeared for the petitioners and Ms Elizabeth Mohere appeared as *Guardian ad litem*.

Submitting in support of the application, Mr Mgoha prayed to adopt the content of their petition and the joint affidavit of the petitioners to form part of their submission. He further told the court that the petitioners herein are husband and wife whereby **NNK** was born on 13/07/1978 and **MN** was born on 22/12/1976. They are both citizens of Kenya. It was his further submission that the petitioners are desirous of adopting the child **SK**, who is a male, Tanzanian aged 17 years old and is currently under the custody of the petitioners. Mr **MN** is a volunteer

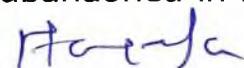


Director at Havilla Children's home and his wife **NNK** is a volunteer director at the same place, working there for over ten years.

More to that he argued that, the child **SK** was abandoned in November, 2004 and later on he was placed at the orphanage called Cradle of Love Baby Home by the Social Welfare Officer of Meru District Council after the matter being reported at the police station. On 18/09/2008 he was transferred to Havilla Children's Home where he met the petitioners and they started taking care of him as their own son since 2013 to date.

It was his further submission that, despite the efforts made by the Social Welfare Officer to find the parents of **SK** parents were nowhere to be found. More to that the petitioners have been declared by the Republic of Kenya to be of good characters with no any criminal records. He argued further that, the child **SK** consented to be adopted and since he is about to turn 18 years he will no longer be allowed to stay at the orphanage. If the petition will be granted the name of the child will change from **SK** to **SNM**. He prayed for the petition to be granted after considering the best interest of the child as provided under **Section 4(2) and 74 (2) of the Law of the Child Act**, Cap 13, R.E 2019.

On her side, Elizabeth Mohere, a Social Welfare Officer from Meru District Council conceded that the child **SK** was abandoned in 2004 and



was placed under two different orphanages and he met the petitioners in the 2<sup>nd</sup> orphanage namely Havilla Children's Home. She added that, the petitioners built a bond with the child since 2013 and in 2019 they notified the District Social Welfare Officer of their intention to adopt the child. However, when Elizabeth Mohere took over the handling of this matter in October, 2022, she noted that the petitioners were staying with the child without any approval for fostering and adoption from the Commissioner for Social Welfare Department. Moreover, she told the court that, upon realising the said faults, she went to talk with the child who is willing to be adopted and have a family and the Commissioner's office allowed her to proceed with the application and notify them if the application would be granted. She said so long as the child is turning 18, she leaves it to the court to decide on the best interest of the child.

In his brief rejoinder, Mr Mgoha reiterated what he had already submitted and added that if the application will not be granted it will affect the child mentally and physiologically since he already has a bond with the petitioners. More to that, it was the Social Welfare Officer of Meru District who connected the petitioners with the child **SK**. So, he prayed for the application to be allowed as it is the best interest of the child to be adopted.

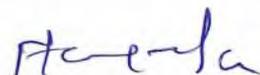


I have gone through the submissions from both sides, the pertinent issue for determination is whether the application before me is on the best interest of the child or not.

The principle of “the best interest of the child” is well provided under **Section 4(2) of the Law of the Child Act** that the best interests of the child shall be the primary consideration in all actions concerning children whether undertaken by public or private social welfare institutions, courts or administrative bodies.

It is a legal requirement that when taking any actions concerning children, best interest of the child shall be the primary consideration. In adoption cases it is particularly emphasised under **Regulation 3 of the Adoption of a Child Regulations, 2011** that the court or any public body shall, in making a decision for adoption of a child consider the best interest of the child.

The assessment of the best interest of the child, is not a single-shot activity but rather it involves multiple processes. It involves different actors of the rights of the child and adherence to the applicable laws. Adoption cases involve different procedures such as foster care placement and then adoption application. Thus, the parties must adhere to the whole process provided for under the law prior to the application of the adoption order.



Normally, one has to start with fostering a child prior to applying for adoption order. Fostering a child is well governed by **Section 32(1) (2), (3), (4), (5) (6) and Part VI of the Law of the Child Act** together with the **Foster Care Placement Regulations, 2012**. The aim of fostering a child is to assess the best interest of the child before allowing him/her to be adopted. If a child has been fostered the Commissioner, through the appointed *guardian ad litem* will be in a position to exercise his/her duty to assist the court in considering the best interest of the child.

In the case at hand, it is undisputed that the child was not fostered. Fostering is normally done after the permission of the Commissioner. The Social Welfare Officer submitted in court that there was no letter from the Commissioner which allowed the petitioners herein to foster or adopt the child. This shows that the Commissioner is not aware of this matter and thus he can not perform his duty to appoint a Social Welfare Officer to act as *guardian ad litem* who will present the rights of the child in court.

It should be noted that, for a Social Welfare Officer to appear in adoption cases, he/she must be appointed by the Commissioner to act as *a guardian ad litem*. The term *Guardian ad litem* is well defined under



**Regulation 2 of Adoption of the Child Regulation** (Supra) to mean:

*"The Social Welfare Officer appointed by the commissioner for Social Welfare to present the right of the child in court during the entire process of application for adoption."*

The appointment of the said Social Welfare Officer must be communicated to the court by the commissioner. The same is well stipulated under **Regulation 4 (5) of the Adoption of Child Regulation**, GN No 197, 2011 which provides that:

*"The commissioner shall appoint a Social Welfare Officer to act as Guardian ad Litem for the child and **shall inform the Court in writing of that appointment.**" (Emphasis added)*

In this application, there is no document from the Commissioner for Social Welfare appointing the Social Welfare Officer to stand as *guardian ad litem* in this matter. The Social Welfare Officer from Meru District Council appeared before this court as a Social Welfare Officer and not as guardian ad litem. She notified the court that the child subject for this adoption was not fostered. This fact has not been disputed by the counsel for the petitioners.

The petitioners have been desiring to adopt the child **SK** and that they have been taking care of him since 2013. The learned counsel for the

petitioners averred that the child is almost attaining the age of majority. Thus, he will have to leave the orphanage and has nowhere to go. Therefore, he prays that the application be granted for the best interest of the child.

Looking at the duration the petitioners came to know the child and develop interest to adopt him it is evident that the petitioners had ample time to go for adoption process. However, all that time they had not taken any step to initiate the process for adopting the said child. Unfortunately, the matter has been filed in this court in June, 2022 few months before the child has to attain the age of majority. The procedures to be followed prior to adoption have not been followed. As clearly submitted by the Social Welfare Officer the child was not fostered by the petitioners. **Section 74 (1) of the Law of the Child Act** stipulates that a person who is not a citizen of Tanzania may adopt a Tanzanian child, if:

*"(c) he has fostered the child for at least three months  
**under the supervision of a social welfare officer.**  
(Emphasis added)."*

As aforesaid, this is a legal requirement upon whose adherence, the procedure of adjudicating the adoption cases in court becomes soft. The case will not stay pending in court waiting for appointment of a *guardian*



*ad litem* as it appeared in this case. It is further provided under

**Regulation 27 of Adoption of Children Regulations** that:

*A foreigner who intends to adopt a child shall adhere to application procedures and conditions for adopting a child provided under the Act and these regulations.*

Being guided by the above provision, I find that the application before me has been prematurely filed. Thus, it falls short of ascertaining the best interest of the child. It is therefore struck out with no order as to costs.

Ordered accordingly.

**DATED** at **ARUSHA** this 24<sup>th</sup> day of November, 2022.

The seal of the High Court of Tanzania is circular, featuring a central emblem with a scale of justice and a book, surrounded by the text "THE HIGH COURT OF TANZANIA".  
*N.R. Mwaseba*  
**N.R. MWASEBA**  
**JUDGE**  
**24/11/2022**