In re LW (A Child) (Adoption Cause E093 of 2023)
[2023] KEHC 24831 (KLR) (Family) (27 October 2023) (Judgment)

Neutral citation: [2023] KEHC 24831 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

FAMILY

ADOPTION CAUSE E093 OF 2023

PM NYAUNDI, J

OCTOBER 27, 2023

IN THE MATTER OF THE CHILDREN'S ACT NO. 29 OF 2022

AND

IN THE MATTER OF ADOPTION OF LW (A CHILD)

AND

IN THE MATTER OF AN APPLICATION FOR ADOPTION

IN THE MATTER OF

JKK ..... 1ST APPLICANT

AWK ..... 2ND APPLICANT

JUDGMENT

1. This is a kinship adoption provided under Section 193 of the *Children Act*, 2022 as the 2nd Applicant is a sister in law to HTK the biological father to minor, whom she seeks to adopt together with JKK (1st Applicant), who is the brother to the biological father vide Originating Summons dated 19th April, 2023 seeking *inter alia* orders; that CWK be appointed Guardian *ad litem* for the child LW.

2. The Applicants have been married since 2002 as per Marriage Certificate Serial No: 418625. Their marriage is blessed with three biological children. The Applicants are both business people. The Applicants wishes to adopt the baby with the intention to provide for him an opportunity of a strong sense of identity, security, stability and belonging.

3. The Application was supported by the Affidavits of even date sworn by the Applicants. The matter was canvassed by way of viva voce evidence on the virtual platform on the 12th October, 2023 and 19th October, 2023 respectively.

4. Baby LW is the subject of the present adoption proceedings. She was born on 8th June, 2013 to HTK and TWM at Kenyatta National Hospital. However, her mother passed on shortly after she was born due to post-delivery complication. AWK (The 2nd Applicant) offered to take care of the child while she was in incubator therefore bonding with the child hence appeared as the fit person to care for the child.

5. The minor has two biological sisters and a step-sister. The biological father through his written consent and verbal interview averred that he arrived to the decision of giving the child away without coercion.

6. Subsequently, the Little Angels Network went through the documents submitted by the relevant parties and declared the child free for adoption on 11th May, 2022 vide Certificate Serial No. [particulars withheld]. The child has since then been in the continuous custody and care of the Applicants.

7. According to correspondences and relevant statutory authorities the biological father gave full consent through a letter dated 13th April, 2022 as well as his interview on 21st September, 2023 thus prompting this Court to dispense with the court attendance of the child's biological father to the proposed adoption of the child by the Applicants.

8. Pursuant to Section 102 of the *Children Act*, before this matter came up for hearing, Little Angels Network, the relevant adoption society, prepared and filed in Court a favourable report in respect of the proposed adoption of the child by both Applicants. Another report in respect of the proposed adoption of the child by the Applicants was prepared by the Director of Children's Services, and this report was similarly in favour of the proposed adoption.

9. Section 122 of the *Children Act* 2022 provides for appointment of a guardian *ad litem*, and according to her statutory report dated 28th September, 2023 in which she noted that the proposed adoption of the child by the Applicants have agreed to take their responsibility seriously and to that they have done an excellent and outstanding job as the child has bonded well with a sense of belonging to the family hence the best interests of the child.

10. Both TNA and TMA attended Court and confirmed they consent to be appointed as Legal Guardians, having understood what the role entails.

11. The Applicants are of good health and financially capable of taking care of the child. They have no criminal record as evidenced by Police Clearance certificates of the first and second Applicants of serial numbers [particulars withhled] and [particulars withheld] respectively. The Director of the Children's Services established that the Applicants have the financial and emotional capability to provide for the upkeep and education of the child. The Director also noted that the Applicants have proposed TA to be the Legal Guardian for the child. The Adoption Society recommends this adoption.

12. This Court observed the Applicants with the child in Court and it was evident that in the period that the Applicants have had the custody of the child, the child has bonded well with them. The child considers the Applicants to be her parents.

13. All the statutory reports that have been filed in respect of the proposed adoption of the child by the Applicants have recommended that this Court allows the joint Applicants to adopt the child. This Court has evaluated the facts of this adoption. This is a kinship adoption. It is evident that the Applicants have fulfilled all the legal requirements relative to the adoption of the child.

14. This Court is alive to the jurisdiction of the High Court vide Article 165 *Constitution of Kenya* 2010 and Section 183(1) *Children Act* 2022. The Court is conscious of the law; Article 53 *Constitution of Kenya* 2010, Section 8 of *Children Act* 2022 and the *UN Convention on the Rights of the Child* & *African Charter on the Rights & Welfare of the Child* all amplify on the best interests of the child.

Determination

15. On the basis of a careful examination of the documents presented before me as well as the observations made therein, this Court has formed the opinion that it would be in the best interest of the child to be adopted by the Applicants. Hence, this Court allows the Applicants' application that: -

    1. The Applicants, JKK and AWK, are hereby allowed to adopt Baby LW.
    2. Henceforth, the child shall be known as LWK.
    3. Her date of birth shall be 8th June, 2013. Her place of birth shall be Nairobi County.
    4. She is presumed to be a citizen of Kenya by birth.
    5. TNA and TMA are appointed Legal Guardians to the Child
    6. This Court directs the Registrar General to duly enter this order in the Adoption Register.
    7. I hereby discharge the guardian ad litem.

    It is so ordered.

DATED AT NAIROBI THIS 27TH DAY OCTOBER, 2023.

P. NYAUNDI

JUDGE

In presence of: -

Mrs. Oduor for the Applicants

Sylvia - Court Assistant