



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

ADOPTION NO. E003 OF 2020

IN THE MATTER OF THE CHILDREN'S ACT 2001

AND

IN THE MATTER OF AN APPLICATION FOR ADOPTION OF BABY AW (INFANT)

BY

NWW.....APPLICANT

JUDGMENT

1. The applicant is a 38-year-old, Kenyan lady. She seeks an order for adoption of baby **AW** a female child.
2. Baby **AW** was born on 9th December 2017. She was admitted to the newborn unit in **Kenyatta National Hospital** suffering from Acute Respiratory Infection. The baby was abandoned by her mother at that hospital. The matter was reported to Kenyatta National Hospital police station. The whereabouts of the mother have remained unknown to date.
3. The child was admitted to **Nest Children's Home** and shortly thereafter committed to the same home. The police post wrote a final police letter addressed to the home and dated 11th October 2018 confirming that efforts to trace the mother have been fruitless.
4. **Little Angels Network**, a registered adoption society, declared the baby free for adoption vide a report dated 31st October 2018.
5. The police have confirmed that the applicant has no criminal record, she is of good health and is financially stable.
6. The **Children Officer** filed before this court a report on 29th September 2021. The Children Officer noted the applicant is financially able to take care of the child. During the home visit, the officer noted that the child was comfortable and has bonded well with the applicant. The officer further noted that the applicant has provided proper care and affection to the minor. The report shows that, that officer was satisfied that the applicant has no adverse interests to that of the minor.
7. The *guardian ad litem* was appointed by the court on 27th May 2021. She filed her report on 19th July 2021. The guardian observes in that report that the baby is well cared for by the applicant and growing in a favorable environment. She recommends the adoption.
8. The parent/guardian of the baby, if any is unknown, and all attempts to trace them has been unsuccessful. An adoption application requires that it be accompanied by a consent, amongst other requirements, of the parent/guardian: see **Section 158 (4)** of the **Children's Act** (hereafter the Act). Having considered the background information set out above I am of the view that this is a case where this court can dispense with the requirement for such a parent/guardian to give their consent to this adoption. Such dispensation is provided for under **section 159 (1) (c)** of the Act, as follows:

(1) The court may dispense with any consent required under paragraphs (a), (b), and (c) of subsection (4) of section 158 if it is satisfied that: -

(a) . . .

(b) . . .

(c) in any case, except in respect of the consents required under paragraphs (e) and (f) of subsection (4) of section 158 that the person whose consent is required cannot be found or is incapable of giving his consent or that his consent has been unreasonably withheld.

9. This court does hereby dispense with the requirement of the consent of the parent/guardian of the child.

10. From the above, I find that the applicant has fulfilled the legal requirements necessary for the making of an adoption order.

11. In the court's view the legal requirements under the Children's Act have been met by the applicant and the court is satisfied that the applicant is aware of the responsibility required of her in adopting the child.

12. The prayers sought therefore are in the best interest of the child hereof.

DISPOSITION

13. This court grants the following orders:

a. The applicant, **NWW** is hereby authorised to adopt **Baby AW** and the child shall henceforth be known as **BN**.

b. **TMW and NKW** are hereby appointed the joint legal guardians of **Baby BN**.

c. Baby **BN** shall be presumed to be a Kenyan citizen by birth.

d. Baby **BN** is presumed to have been born on 9th December 2017 at Nairobi County.

e. The **Registrar General** is hereby ordered to make appropriate entries in the Adopted Children's Register in respect to baby **BN**.

f. The consent of the biological parent/s or guardian is hereby dispensed with.

JUDGMENT DATED AND DELIVERED AT KIAMBU THIS 21ST DAY OF FEBRUARY, 2022

MARY KASANGO

JUDGE

Coram:

Court Assistant:- Mourice

For the applicant: - N/A

COURT

JUDGMENT delivered virtually.

MARY KASANGO

JUDGE