



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

ADOPTION CAUSE NO. 5 OF 2020

IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2011

IN THE MATTER OF AN APPLICATION FOR THE KINSHIP ADOPTION OF AM

BY

EWN

(APPLICANT)

JUDGMENT

1. The application before the court is an originating summons dated 17th January, 2020 seeking substantively the adoption of AM a minor, by the Applicant EWN. From the record, the Applicant is a Kenyan Citizen residing in New Jersey in the United States of America and works as Health Nurse Officer.

2. The applicant is the maternal Aunt of the Minor. The mother of the Minor, JWN the applicant's sister, died on 6th August, 2019, leaving the Minor entirely in the care and custody of both the applicant and her grandmother JWN. On 6th September, 2019 with the consent of both of the minor's father JMM the applicant was appointed legal guardian of the minor and granted the sole actual and legal custody of the minor vide Children's Court Miscellaneous case No. 103 of 2019.

3. The child in question was born on 2nd September 2008 at St. Mary's Hospital in Nairobi as reflected in the Birth Certificate Entry No. [...]. Since the demise of his mother in 2019, he has been in the care of his ailing maternal grandmother and the Applicant herein.

4. Prior to the hearing of the adoption application, Kenya Children's Home Adoption Society prepared and filed a report dated 2nd March, 2020. They also issued a Certificate Serial No. [...] dated 18th December, 2019 declaring the child free for adoption. The guardian ad litem CWT filed a report dated 10th February, 2021 which was favourable and recommended the adoption of the child by the Applicant.

5. An officer from the office of the Department of Children Services conducted home visits and established that the applicant is financially and emotionally capable of providing for the upkeep and education of the child. She filed a report dated 17th August, 2020 recommending the adoption for reasons that the child stands to gain a family and the opportunities provided by becoming the child of the Applicant, and that the Applicant has fulfilled the statutory requirements.

6. Article 53(2) of the Constitution, provides the over-arching principle which must apply whenever any decision concerning a child is to be considered. It provides that:

“A child's best interests are of paramount importance in every matter concerning the child”

This constitutional and internationally applicable principle is embedded and amplified in the Children's Act, No 8 of 2001, particularly at **section 4(3)** of the Act.

7. In **Re JNA [2018] eKLR** the court reiterated the concept of “local adoption” when it stated as follows:

“Kenyans living abroad and wishing to adopt a Kenyan child will adopt as Kenyans by way of domestic adoptions. This is therefore considered to be a local adoption.”

8. The Court cited with approval the Guidelines for Alternative Family Care of Children in Kenya at page 153 which states as follows:

“kinship adoption is adoption by adopters who are kin or relatives within the extended family of the child”

9. This court is satisfied that in the present case, this is a kinship adoption, and is also a local or domestic adoption. The court is also satisfied that the applicant is a suitable person with the demonstrated financial and social means to provide and care for the Minor, and has been doing so for a considerable period prior to making this application. It is also noted that the applicant and the Minor have a sound relationship and have bonded well. The Consent of the biological father has been granted.

10. Consequently my considered view is that it is in the best interest of the child to be adopted by the Applicant. Reasons wherefore, I allow the prayers sought in the amended Originating Summons dated 11th March, 2019 and Order as follows:

- i. The Applicant EWN be and is hereby allowed to adopt **AM** (minor).
- ii. SMN and EMM are hereby appointed as the legal guardians in the event that the Applicant dies, or is incapacitated by ill health.
- iii. The Registrar General is directed to enter this Order in the Adopted Children’s Register.
- iv. The Director of Immigration is hereby authorised to issue the child with a Kenyan Passport.
- v. The guardian ad litem is hereby discharged.

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 27TH DAY OF MAY, 2021.

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L. A. ACHODE

HIGH COURT JUDGE

In the presence ofAdvocate for the Applicant