



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 169 OF 2018 (O.S)

IN THE MATTER OF THE CHILDREN ACT NO. 8 OF 2001

IN THE MATTER OF ADOPTION OF BABY TNO (THE CHILD)

BY

JO (APPLICANT)

JUDGMENT

1. The Applicant JO is a Kenyan citizen. She is single, has never been married and has no child of her own. She wishes as a single Applicant to adopt the child known as Baby TNO, a minor of the female sex, through the Originating Summons dated 22nd October, 2018 as amended on 17th May, 2021.
2. From the pleadings, the court gathers that the Applicant is a business woman and is also a nurse by profession. She resides in Umoja Estate in Nairobi and professes the Christian faith. At present she is in Paris, France where she moved to sometime in the year 2020 to secure sponsorship for her PHD studies.
3. Records indicate that the minor is a niece to the Applicant having been born on 18th March, 2014 to the Applicant's brother EOO and his wife LAO, hereinafter referred to as the biological parents. A copy of a Certificate of Birth of serial no. [Particulars Withheld] is on record. Whereas the child's biological parents assumed parental responsibility over her, she has never lived with them and was previously in the physical custody of her grandmother, MAO, until her death on 26th August, 2017. A copy of a Certificate of Death of serial number [particulars withheld] is on record in this regard.
4. On the demise of the child's grandmother M, the Applicant took up the legal and actual custody of the child at the request of the biological parents of the child who are both HIV positive and as a result suffer various illnesses. The Applicant also took legal and actual custody of the child's four siblings.
5. Kenya Children's Homes Adoption Society prepared and filed a report dated 20th November, 2018. They had also issued a Certificate of Serial No. [...] dated 19th September, 2018 declaring the child free for adoption. The guardian ad litem MKK filed a report dated 14th April, 2021 which was favourable and recommended the adoption of the child by the Applicant stating that not only was it a kinship adoption but also that it would grant the child an opportunity to grow up in a loving, safe and nurturing home.
6. An officer from the office of the Director Children's Services conducted independent investigations and prepared and filed a report dated 24th March, 2021. At the date of the report, the Applicant was residing in Paris, France while the child, together with her siblings, were living with her biological parents in Oyugis, Homa Bay County. The officer established that the Applicant is financially and emotionally capable of providing for the up keep and education of the child. He recommended the adoption for reasons that it will serve the best interest of the child, who stands to gain by becoming a daughter of the Applicant. Further that this being a kinship adoption, the child will maintain her identity. He urged that the Applicant had met all the requirements for a local adoption.
7. Additionally, there is on record an affidavit of consent to the adoption of the child which was sworn jointly by the child's biological parents, E and L, on 11th September, 2018. In it, they indicate that they had both agreed that the best way forward was to offer the child and her siblings to the Applicant for adoption since they are both living positive and in addition, E is epileptic and L asthmatic. Also that they depend on the Applicant for the provision of basic needs. On 30th July, 2018 they approached the Kenya Children's Homes Adoption Society and made clear their intention to offer the child to the Applicant for adoption. The implications of their decision were explained to them and they were taken through the "Adoption of Children - Explanatory Memorandum for Biological Parents/ Guardians Offering Child for Adoption". Thereafter, they duly signed a Certificate of Acknowledgment as a confirmation of their understanding of the Memorandum.
8. Notably, the child's biological father E has since passed away. A copy of a Certificate of Death of serial number [...] which indicates that he died on 21st April, 2021 is on record.

9. EAO and CCA, a sister and aunt to the Applicant respectively, have by a joint affidavit sworn on 22nd October, 2018 consented to be appointed as legal guardians in the event that the Applicant is incapacitated and cannot care for the child. The Applicant's family members are aware of the proposed adoption and support it.

10. It is important to note that the orders sought by the Applicant herein relate to a child. In law, in any matter concerning a child the best interests of a child are paramount as provided under **Article 53(2)** of the **Constitution** and **section 4(3)** of the **Children Act No. 8 of 2001**.

11. This is not only a local adoption but also a kinship adoption since the Applicant is an Aunt to the child. After a careful assessment of the reports filed herein, I am convinced that the Applicant has fulfilled all the legal requirements relating to the adoption of the child. The single Applicant was born on 20th January, 1978 and is therefore aged 43 years. She is therefore within the age bracket eligible to adopt, being an adult below the age of 65 years as provided under **section 158(1)** of the **Children Act**. The Applicant also meets the social parameters that are considered relevant to her taking on parental responsibility and custody of the child in this matter on a permanent basis as would be conferred by the adoption order sought.

12. At the virtual hearing, the child was jovial and in good spirits and was observed to be in good health. This court has therefore formed the opinion that it would be in the best interest of the child to be adopted by the Applicant. Not only does the child gain a warm and loving home and maintain her kinship ties, the adoption will also allow her to stay together with her siblings who the Applicant also seeks to adopt.

13. Reasons wherefore I allow the prayers sought in the Amended Originating Summons dated 17th May, 2021 and order as follows:

- i. The Applicant, JO is hereby allowed to adopt **Baby TNO (The Child)**. Upon adoption she shall continue to be known as **TNO**.
- ii. Her date of birth is 18th March, 2014, and the place of birth is Mayenya, Kisumu East.
- iii. EAO and CCA are hereby appointed legal guardians of the child in the event that the Applicant dies, or is incapacitated by ill-health.
- iv. The Registrar General is directed to enter this Order in the Adoption Register.
- v. The Director of Immigration is hereby authorized to issue the child with a Kenyan passport.
- vi. The guardian ad litem is hereby discharged.

It is so ordered.

DATED, SIGNED AND DELIVERED IN VIRTUAL COURT THIS 24TH DAY OF JUNE, 2021.

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L. A. ACHODE

HIGH COURT JUDGE