



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

FAMILY DIVISION

ADOPTION CAUSE NO. 76 OF 2018

IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001 AND THE ADOPTION RULES

AND

IN THE MATTER OF BABY AI aka G

AND

IN THE MATTER OF AN APPLICATION FOR ADOPTION

BY

NWM.....APPLICANT

JUDGMENT

1. Before this Court is the Originating Summons dated 25th May 2018 by which the Applicant seeks orders as follows:-

- 1. THAT the Applicant NWM, be authorized to adopt the child currently identified and known as BABY AI alias G.**
- 2. THAT henceforth, the child be renamed as NNM.**
- 3. THAT this Honourable Court do declare that the child's date of birth is 9th March 2017 and her place of birth is Nairobi County.**
- 4. THAT the child be presumed to be a Kenyan Citizen by birth, and hence be entitled to the rights and benefits of a Kenyan Citizen, including issuance of a post-adoption Certificate of Birth and Passport.**
- 5. THAT CNM be appointed as the Legal Guardian in respect of the child.**
- 6. THAT the Guardian ad Litem be discharged.**
- 7. THAT the Registrar General be directed to make the appropriate entries in the Adopted Children Register and do issue a Certificate to that effect.**
- 8. THAT this Honourable Court do issue such further orders as are in the interest of justice.**

2. The Summons was supported by the Affidavit of even date sworn by **NWM** (the Applicant herein). The application was canvassed by way of viva voce evidence in the virtual platform.

3. The Applicant **NWM** told the Court that she was a single mother of one adopted daughter. That she has filed this present application to adopt a second girl-child. The Applicant told the Court that her family were aware of and supported her intention to adopt a second child. The Applicant confirmed that she was aware of the legal implications of an Adoption Order and confirmed that she would accord to the subject-child all the rights due to a biological child, including the right of inheritance.

4. **PW2 CN** was a sister to the Applicant who indicated her consent to act as Legal Guardian for the child.

5. **PW4 IRENE OGUTU** represented **BUCKNER ADOPTION AGENCY**. She confirmed that the Agency had on **14th September 2018** filed in Court their Report. **PW5 EZEKIEL KIMANI** appeared for the **Director Childrens Services**. He confirmed that the Director had filed its Report dated **16th November 2018** which report recommended the Adoption.

ANALYSIS AND DETERMINATION

6. I have considered the evidence adduced in open Court as well as the various Affidavits and Reports filed in this matter. The Preliminary requirements for the making of an Adoption Order are set out in **Section 156(1)** of the **Children's Act** which provides as follows:-

“159(1) No arrangement shall be commenced for the adoption of a child unless the child is at least six (6) weeks old and has been declared free for adoption by a Registered Adoption Society in accordance with the Rules prescribed in that behalf.”

7. The subject-child was born on **9th March 2017**. She is now aged **4 years old** which is above the **six (6) week** age limit provided for in the **Act**. **BUCKNER KENYA ADOPTION SERVICES** which is a Registered Adoption Agency have filed in Court the original copy of their Certificate Serial Number [...] dated **15th November 2017** declaring the child Free For Adoption. Accordingly I am satisfied that the legal prerequisites for an adoption order have been met.

8. The duty of this Court is to assess and determine the suitability of the Applicant as an Adoptive Parent. The Applicant is a Kenyan citizen as evidenced by the copy of her National Identity Card annexed to the Summons (Annexure '**NM-4**').

9. The Applicant told the Court that she is single and has never been married. That though she has no biological children of her own she is the mother of a daughter now aged **ten (10) years** whom she adopted in the year **2010**. The Applicant has annexed copies of the Adoption Order in respect of her daughter **NNM**, which order is dated **21st May 2010** (Annexure '**NM-5A**') as well as the Certificate of entry into the Adopted Childrens Register for said child (Annexure '**NM-5**').

10. The Applicant who is a trained Clinical Pediatrician is gainfully employed by [Particulars withheld]. The Applicant earns approximately **Kshs. 100,000/-** monthly which is sufficient to enable her provide for the **two (2)** children. She has annexed copies of her Employment Contract dated **1st September 2017** (Annexure '**NM-6A**') as well as copies of her pay-slips (Annexure '**NM-6C**'). Aside from earnings from employment the Applicant also has invested in land and owns plots in **Kitengela, Utawala and Naivasha** as well as holding Shares in various Companies. All in all I am satisfied that the Applicant is financially stable and is able to provide for an additional family member.

11. The Applicant stated that she is motivated to adopt another child because she has great love for children and wishes to provide a needy child with a home. She told the Court that she is a committed Christian and intends to raise the child in the Christian faith. Annexed to the Summons is a Letter of Recommendation dated **14th July 2017** written by **Pastor Kyalo Ndungo** of **The Purpose Centre** where the Applicant is a congregant. (Annexure '**NM-3**').

12. The Applicant was examined by a Doctor and found to be in good physical and mental health. She has annexed a copy of her Medical Report dated **11th July 2017** prepared by a **DR. RHODA MUNENE** of **Aga Khan University Hospital** (Annexure '**NM-7**'). She has also annexed a copy of a **Clearance Certificate** issued by the **National Police Service** proving that the Applicant has no criminal antecedents (Annexure '**NM-8**'). The Applicant has appointed her sister **CN** as the Legal Guardian for the child. The said **Ms. CN** testified in Court and confirmed her willingness to act as **Legal Guardian** in the event the Applicant is unable or unavailable to care for the child.

13. The Applicant is not new to the Adoption. She had previously adopted a girl-child in the year **2010**. This is an indication of the love that the Applicant has for children and her desire to assist needy children. The child earlier adopted by the Applicant appears to be thriving as is evident from the photograph annexed to the Summons depicting the Applicant and her two daughters (Annexure at **page 20**). From the material availed to this Court I have no doubt at all that the Applicant is a suitable adoptive parent.

14. The subject child was born on **9th March 2017**. Two days after her birth the child was abandoned by the roadside in the **Kayole Area of Nairobi**. A good Samaritan called **Jane Njoki** rescued the child and reported the matter at **Kayole Police Station** vide **OB No. 28 of 12th March 2017**. Thereafter on **13th September 2017** the **Nairobi Children's Court** committed the child to the care of **Imani Children's Home** as a child in need of Care and Protection. A copy of the committal order is Annexure '**NM-19**'. On **19th November 2017** the child was placed in the custody of the Applicant under a Foster Care Agreement (Annexure '**NM-15**').

15. **Article 14** of the **Constitution of Kenya, 2010** deals with the question of **Citizenship**. **Article 14(4)** provides as follows:-

“(4) A child found in Kenya who is, or appears to be, less than eight years of age and whose nationality and parents are not known, is presumed to be a citizen by birth.”

16. This is a child who was abandoned **two (2) days** after her birth. Given that the child was found abandoned in the Republic of Kenya I do hereby declare her to be a Kenyan citizen by birth. To date no person has come forward to claim the child. Police efforts to trace the biological parents of the child have borne no fruit. Annexure '**NM-20**' is a copy of the Final Police Letter dated **23rd October 2017** written by the **Officer incharge, Kayole Police Station**.

17. In view of the fact that there exists no known person from who consent for this adoption can be sought and / or obtained I waive the requirement for consent in line with **Section 159(1)(a)** of the **Children Act, 2001**.

18. In deciding upon any matter involving a child Courts are obliged to give priority to the best interests of the said child. **Section 4(2)** of the **Children Act** provides:-

“(2) In all actions concerning children, whether undertaken by public or private social welfare institutions, Courts of Law administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration.” [own emphasis]

19. The subject-child was abandoned shortly after her birth. She faced an uncertain future in Childrens Homes and similar institutions. This adoption allows the child the opportunity to be raised in a stable and loving home environment.

20. I was able to see and talk to the child online. She was a happy cheerful and articulate child. She answered simple questions put to her and was obviously well cared for. The child has lived with the Applicant in her home since **October 2017**. Undoubtedly she has bonded with the Applicant and her elder daughter. I have perused the reports prepared by the **Guardian Ad Litem**, the **Adoption Agency** and the **Director Childrens Services (DCS)**. All the said reports are positive and recommend the Adoption.

21. A Home visit was conducted by the **DCS**. The Applicant was stated to be living in her own home in Embakasi. The home is a three bed-roomed Apartment which was found to be spacious and well-furnished. The home is within a secure gated community. The Applicant has engaged a Nanny to assist in caring for the children. It was noted that the child had adequate toys to play with.

22. From the above I am satisfied that this adoption serves the best interests of the child. Accordingly I allow this Summons and make orders as follows:-

1. The Applicant **NWM** is authorized to adopt the child **BABY AI a.k.a G**.
2. Upon adoption the child shall be known as **NNM**.
3. The child is declared to be a Kenyan citizen by birth and her date of birth is **9th March 2017**.
4. The child will be entitled to all the rights and benefits due to a Kenyan citizen including issuance of a Birth Certificate and a Passport.
5. The Registrar General is directed to make the relevant entry in the Adopted Children’s Register.
6. **CN** is appointed as the Legal Guardian of the child.

DATED IN NAIROBI THIS 30TH DAY OF JULY, 2021

.....

MAUREEN A. ODERO

JUDGE