



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

ADOPTION CAUSE NO. 166 OF 2018

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

AND

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

JOAPPLICANT

JUDGMENT

(1) Before Court is the Amended Originating Summons dated **17th May 2021** by which the Applicant **JO** seeks the following orders:-

- 1. THAT the Applicant be authorized to adopt the child, QKO who is a Kenyan citizen, born on the 12th day of September 2012.**
- 2. THAT upon adoption, the minor shall continue to be known as QKO.**
- 3. THAT EAO of Kenyan National Identity Card Number [...] and CCA of Kenyan National Identity Card Number [...] be appointed as legal guardian of QKO.**
- 4. THAT the Registrar General be directed to enter this adoption into the Register of Adoptions and a subsequent Birth Certificate do issue by the Registrar of Births and Deaths.**

(2) The Summons was supported by the Statement of the Applicant of even date, and was canvassed by way of viva voce evidence on the online platform.

(3) The Applicant **JO** is a nurse working in the **Republic of Kenya**. She is not married and has no biological children of her own. The applicant told the Court that she wishes to adopt the subject-child who is a girl child age **nine (9) years old**. That the child is her niece being the daughter of the Applicants elder brother.

(4) The Applicant testified that the parents of the child who are unable to provide for the child, have given their consent to the adoption. She confirms that she fully understands the legal implications of an adoption order and undertakes to accord to the child all the rights due to a biological child including the right to inherit. That the entire family is in support of the adoption.

(5) **PW2 LAO** is the biological mother of the subject-child. She confirmed to the Court that she had given her consent and was in support of the adoption. The mother stated that she was unwell and unable to care for the child. That her husband (the child's father) passed away in **April 2021**. The mother told the Court that the Applicant has all along been providing for the child and her **four (4)** siblings.

(6) **PW4 MR. NDOTONO** represented the **Kenya Children Homes** a Registered Adoption Agency. He confirmed that the Agency had filed in Court their report in which they recommended the adoption.

(7) **PW5 MR. EZEKIEL KIMANI** represented the **Director Children's Services (DCS)**. He too confirmed that they had filed their Report dated **24th March 2021** recommending the Adoption.

(8) **PW6 MK** was the Guardian Ad Litem. She confirmed having filed her report dated **14th April 2021** recommending the Adoption.

ANALYSIS AND DETERMINATION

(9) 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.”

(10) The subject child is a girl-child who was born on **12th September 2012** as evidenced by the copy of her Birth Certificate Serial Number **7300607** which is annexed to the Summons. Therefore the child is now aged **nine (9) years old** which is above the **six (6) week** limit provided for by law.

(11) **KENYA CHILDREN'S HOME ADOPTION SOCIETY**, which is a Registered Adoption Agency have annexed to their Report a Certificate Serial Number [...], dated **19th September 2018** declaring the child Free For Adoption. Accordingly I am satisfied that the legal prerequisites for an adoption order have been met.

(12) The duty of this Court is to analyze the material placed before it to determine whether the Applicant is a suitable adoptive parent. The Applicant is a Kenyan citizen as evidenced by the copy of her National Identity Card (Annexure **JO-2'**). The Applicant has never been married and has no biological children of her own. She is a trained Nurse who has worked overseas but now runs a business in **Nairobi, Kenya**.

(13) The Applicant told the Court that she wishes to adopt the subject-child who is her niece as the child's parents had proved irresponsible and were not able to provide proper care for their **five (5)** children. Indeed the subject-child and her **four (4)** siblings had all been left in the care of the Applicant's mother **MO** who was their maternal grand-mother. When the grandmother passed away in the year **2017** the family met and the Applicant offered to adopt all her brothers children and take over their care.

(14) The Applicant is a Christian and intends to raise the child in the Christian Faith. She has annexed recommendation (Annexure '**JO-4'**) written by **REV. D. A. ODHIAMBO** Bishop of **NOMIYA CHURCH**.

(15) The Applicant runs a vegetable supply business in **Nairobi**. She has annexed copies of her bank statements from the **BANK OF INDIA** (Annexure '**JO-3'**') which shows that she is financially secure and in a position to provide for the needs of the child. Additionally the Applicant owns properties both in Kenya and abroad which can be used to secure additional funding if need be. She has annexed a copy of a Title Deed (Annexure '**JO-3'**') for a piece of land in **Homa-Bay County** registered in her own name.

(16) The Applicant was examined by a Doctor and found to be in good health. She has also annexed a copy of a **Clearance Certificate** issued by the **Kenya Police Service** proving that the Applicant does not have a criminal record. The Applicant has appointed her elder sister **EAO** and **CCA** as Legal Guardians for the child. Both Legal Guardians have signed a consent dated **22nd October 2018** to act as Legal Guardians (Annexure '**JO-8'**'). From the material which has been presented to this Court I am satisfied that the Applicant is a suitable adoptive parent.

(17) **Section 158(4)(a)** of the **Children Act 2001** provides as follows:-

“(4) Subject to Section 159 an adoption order shall be accompanied by the following written consents to the making of an adoption order in respect of any child-

(a) the consent of every person who is a parent or guardian of the child, or who is liable by virtue of any order or agreement to contribute to the maintenance of the child.”

(18) The child **QKO** was born to **EOO** a brother to the Applicant and his wife **LAO**. Both the child's parents gave their consent to the adoption. The child's biological father passed away on **28th April 2021**. A copy of his Death Certificate Serial No. [...] is annexed to the Amended Summons (Annexure '**JO-9'**'). However during his lifetime the father did together with the child's mother sign an Affidavit of Consent for Adoption of the child which consent is dated **11th September 2018** (Annexure '**JO-6'**').

(19) The child's biological mother **LAO** testified in these proceedings. She told the Court that her husband had died in **April 2021** and that she herself had no means to enable her provide for the child. **PW2** confirmed her consent to the adoption. She also confirmed that she understood that her consent could not be revoked. It is clear that the child's parents willingly gave up this child for adoption. I am satisfied that the required consent for the adoption has been sought and obtained as required by **Section 158(4) (a)** of the **Children Act**.

(20) 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 interests of the child shall be a primary consideration.” [own emphasis]

(21) From the various reports on record, it is clear that the child herein was born to parents who were both irresponsible and did not give priority to caring and providing for their children. The child and her siblings were left in the care of their paternal grand-mother. Upon her death in **2017** the children were left unattended. The Applicant has now stepped in and has offered to adopt the child in order to provide her with a stable home environment. Indeed the child's mother stated that the Applicant has been providing for the needs of the child all along.

(22) Section 76(3) (a) of the Children Act provides:-

“(3) Where the Court is considering whether or not to make an order with regard to a child, it shall have particular regard to the following matters-

(a) The ascertainable feelings and wishes of the child concerned with reference to the child’s age and understanding.” [own emphasis]

(23) The subject-child was interviewed on line. Though young she was able to express herself very well. She stated her willingness to be adopted by her Aunt. The child stated that she was happy living with the Applicant.

(24) I have perused the reports filed by the Adoption Agency, the DCS and the Guardian Ad Litem. All were positive and all recommended the adoption. I find that this adoption will remove the child from uncertainty and neglect and provide her with a stable and loving environment in which she will be able to thrive. I further note that this is a kinship adoption so the child will remain within the family of her birth. In my view this adoption serves the best interests of the child.

(25) Finally I allow this application and make the following orders:-

- (1) The Applicant **JO** is authorized to adopt the child known as **QKO**.
- (2) Upon adoption the child will be known as **QKO**.
- (3) **EAO** and **CCA** are appointed as the Legal Guardians for the child.
- (4) The Registrar General is directed to make the relevant entry in the Adopted Children’s Register.
- (5) Upon adoption the child shall be entitled to all rights and benefits under the **Constitution of Kenya** and all applicable laws.

Dated in **Nairobi** this **30TH** day of **JULY, 2021**.

.....

MAUREEN A. ODERO

JUDGE