



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

FAMILY DIVISION

ADOPTION CAUSE NO. 9 OF 2020

IN THE MATTER OF AN APPLICATION FOR ADOPTION OF BABY WI

MWM.....APPLICANT

RULING

1. This is a ruling on **originating summons** dated **5th March 2020** by the applicant herein seeking to be authorized to adopt baby **WI**, the subject's name to remain the same and the Registrar General do make the appropriate entries in the adopted children's register in respect of **M W**.
2. The application is supported by a statement of particulars signed by the applicant on 5th March 2020 together with documents attached.
3. The applicant is a Kenyan adult born in the year 1963, having separated from her husband after a troublesome marriage. She is a businesswoman residing for gain in Nakuru and capable of taking care of the child.
4. She averred that the minor was presumably born on 16th April 2007 and was rescued from the Good Samaritan house after she was abandoned by her mother at Kiangombe who had been hosted for the night. The matter was reported as Embakasi Police Station vide O.B. No.xxxxx. The child was vide Nairobi Children Case No. 336 of 2009 committed to Imani Children's Home.
5. She averred that the minor has been declared free for adopting by Buckner Kenya Adoption Services on 16th April 2007 and a certificate with serial No. xxxx issued. She would like to adopt the child as she is physically and mentally fit to adopt the child.
6. Buckner Adopting Services in their report averred that since the child was placed in their care, no relative or person has come up to claim her and the police efforts to trace her kin proved futile. The applicant is financially capable to provide for the child, she earns a monthly income of Kshs. 20,000/= as a tailor.
7. During examination in Court, the applicant averred that the child was 11 years old when she was placed under her care in the year 2018. She proposed that the name of the minor change from **WI** to **MW**.
8. **BNC** confirmed that the applicant was her sister and she was aware that she was adopting the child and she has agreed to be the legal guardian of the minor.
9. The minor **MW** was examined by the Court and she confirmed that she has lived with the applicant for 3years and she is happy living with her as she is well taken care of, attending school and she is comfortable with the applicant.
10. The director of children services their report on 30th June 2021 in which they indicated that the applicant is suitable to adopt the child; that the applicant is mentally, financially stable to take care of the child and it is in the best interest of the child for her to be adopted by the applicant.
11. From the reports filed, the minor herein was abandoned in a Good Samaritan house at Kiangombe and the matter was reported to Embakasi Police Station. From reports filed by the police and Buckner Adopting Services no relative has come forward to claim the baby. Thus, the issue of the parent's consent is not applicable and the same is dispensed as per **Section 159(1) of the Children Act**.
12. **Section 157(1) of the Children's Act** does provide that:-

(1) “Any child who is resident within Kenya may be adopted whether or not the child is a Kenyan citizen, or was or was not born in Kenya:

Provided that no application for an adoption order shall be made in respect of the child unless the child concerned has been in continuous care and control of the applicant within the republic for a period of three consecutive months preceding the filing of the application and both the child and the applicant or applicants as the case may be evaluated and assessed by the national adoption society or any other registered adoption society in Kenya.”

13. The child is above 6months of age which is within the recommended age for adoption. She has been in the care and control of the applicant since 2018 a period of 3 consecutive months in compliance with **Section 157 (1) of the Children Act.**

14. On the applicant's suitability, she is a Kenyan adult born in the year 1963, having divorced her husband. She is not in a position to sire a child due to medical reasons and she is desirous and capable of taking care of a child. She was 57 years of age when filing this application thus satisfying the age bracket of adoption of not being less than 25 years of age or more than 65 years of age. As per **Section 158 of the Children Act.**

15. Section 158 provides as follows:-

“For purposes of adoption, the Court, may make an order upon an application by a sole-applicant or by two spouses where the applicant or at least one of the joint applicants:

(a) has attained the age of twenty-five years and is at least twenty-one years older than the child but has not attained the age of sixty-five years or

(b) is a relative of the child

(c) or is the mother or father of the child in this legal formulation any applicant who is above sixty-five (65) years is disqualified from being an adoptive parent.

The other scope catered for the Act an exclusion criterion is where it's certified that the applicant is or are of unsound mind, he/she or both have been convicted by a Court of Law for offences in the third schedule or the applicant or applicants are homosexuals.”

16. From reports filed, the applicant is economically and financially stable earning a monthly salary of Kshs. 20,000/= working as a tailor. She stays in a three-bedroomed house which is conducive for the minor. The relatives and the former husband have no issues or restrictions to her adopting the minor. The husband of the applicant though separated has sworn an affidavit confirming being aware of the said adoption and he has no objection to the same

17. Buckner Adopting Services issued a report in favor of the applicant; they stated that it is in the best interest of the child to be placed in the care and custody of the applicant.

18. From the reports filed, the child has no none relative; she was abandoned by the mother and no relative has showed up looking for her since she was committed to Imani Children Home. They are of the view that the child desires to have a happy place where she can call home and a person, she can call mother.

19. I do agree with the adopting agencies' report that the child will be better placed with the applicant unlike living in the children's home. From the foregoing, it is in the best interest of the child to be placed under the care and custody of the applicant.

20. FINAL ORDERS

1) The applicant hereby be authorized to adopt a baby WI.

2) The Registrar General to enter in the adopted children register an entry recording this adoption.

3) The child to adopt the name MW.

RULING DATED, SIGNED AND DELIVERED VIA ZOOM AT NAKURU THIS 30TH DAY OF SEPTEMBER, 2021

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RACHEL NGETICH

JUDGE

IN THE PRESENCE OF:

MIRUKA - COURT ASSISTANT

MS. MBECHE FOR APPLICANTS