



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

ADOPTION CAUSE NO.02 OF 2020

IN THE MATTER OF THE CHILDREN'S ACT

AND

IN THE MATTER OF ADOPTION

JM.....MINOR

BY

JA.....APPLICANT

RULING

1. Vide her application dated 8thDecember 2020, **JA**, sought the following orders;

- 1) **THAT EM** be appointed as Guardian Ad Litem of the minor **JM**;
- 2) **THAT** the county Director of children's do evaluate the applicants and file a report.
- 3) **THAT** the applicant be authorized to legally adopt **JM** (hereunder referred to for all common interest and purposes as the minor herein.)
- 4) **THAT SNO** and **ENN** be appointed as the next of kin and legal guardians to the minor herein;
- 5) **THAT SNO** and **ENN** be appointed legal guardian for the minor;
- 6) **THAT** the minor be presumed a Kenyan citizen having been born by Kenyan parents and be issued with a Kenyan passport by the Director of Immigration Kenya; and
- 7) **THAT** the Registrar General do make the appropriate entry of JM the minor herein the adopted children's register.

2. In support of her application, J swore an affidavit deposing that she had applied to adopt the minor, JM who had been in her custody under a foster care arrangement since his mother passed away. That upon the demise of his mother, the minor was left with his grandparents who were old and financially incapable to provide for him. She stated that she was a resident of [particulars withheld] county and was unmarried and had no children of her own. Her main motivation for adopting the minor was to give him an identity and bequeath him an inheritance.

3. J deposed that the minor who was born on 15th September 2009 had fitted in well with her family. She stated that she was a devout Christian and intended to bring up the minor in a Christian environment, teaching him Christian values and ethics. She averred that she had not received or agreed to receive any consideration for the adoption. She thus urged the court to allow her prayer to adopt the minor.

4. Other than the applicant's affidavit and statement in support of the application, the Originating Summons was also accompanied by the affidavit and consent of the proposed guardian *ad litem*, an affidavit by one HMO attesting to the fitness of the guardian *ad litem*, a consent signed by the proposed legal guardians and an affidavit by the minor's grandfather. The application was also accompanied by copies of various exhibits including the minor's certificate of birth, the certificate of death of the minor's mother, the applicant's police clearance certificate and the applicant's bank statements.

5. On 23rd February 2021, this court appointed EM as the minor's guardian *ad litem*. The court also directed the Director of Children Services to prepare the requisite report thereby disposing of prayers 1 and 2 of the Originating Summons.
6. The County Co-ordinator, Children Services, Nyamira prepared a report dated 19th July 2021, on the suitability of the applicant to adopt the minor in accordance with the court's orders. He indicated that he had interviewed the minor's grandfather SNM and elder brother VM. He also interviewed the Chief of Bonyarorande location, where the applicant resided, close neighbours and family members who were all agreeable to the adoption of the minor by the applicant.
7. The County Co-ordinator, Children Services established that the minor was the applicant's nephew. From his inquiry, he was able to ascertain that the applicant was financially stable and had taken good care of the minor and catered to his needs including paying his school fees since the demise of his mother. The officer noted that the minor had bonded well with the applicant and the minor fondly referred to her his mother. It was therefore his recommendation that the minor be adopted by the applicant.
8. A report filed earlier by the Little Angels Network dated 8th April 2021 had declared the minor free for adoption. It indicated that the minor was born on 15th September 2009 to the late EMB, who was a single parent. On 3rd September 2014, the minor's mother passed away as a result of Cryptococcal meningitis. The minor was left in the care of his maternal grandparents who gave him to the applicant because they had no means of taking care of him. The minor's elder brother, VM who was 18 years old, had given his consent to the adoption of his brother by the applicant as he too was not in a position to take care of his brother.
9. The society's report observed that the minor had been staying with the applicant since 2014 and identified with J as his mother. The adoption society had not been able to obtain the consent of the minor's father as he was not known. It was noted that the adoption was within the family and was meant to formalize an existing relationship between the child and the applicant. Having satisfied that the minor was available for adoption and that the adoption would be in the child's best interests, the Little Angels Network issued certificate number xxxx dated 8th April 2021, declaring the child free for adoption pursuant to Section 156 (1) of the Children's Act.
10. On considering the application, the affidavits sworn in support of it and the aforementioned reports, I find that it is in the best interest of the minor that he be adopted by the applicant. In their reports, the adoption society and the Children Services County Co-ordinator, stated that the minor's, mother was deceased. They noted that the applicant had been living with the applicant since the demise of his mother and he was well taken care of and in good health. The minor's elder brother, his grandfather and the area chief all gave their consent to the adoption of the minor by the applicant.
11. The proposed legal guardians of the minor, SNO and ENN also signed a consent to act as the child's guardians.
12. Although the applicant is a sole female seeking to adopt a male child, this court is inclined to grant the adoption order as the child is the applicant's nephew. The minor has been living with the applicant for more than 6 years since the demise of his mother and has formed a close bond with the applicant.
13. As the child's father is unknown, I dispense with his consent to the adoption of the child.
14. All considered, the applicant, **JA**, is hereby allowed to adopt **JM**. EM is discharged as a guardian *ad litem* and SNO and ENN are hereby appointed as legal guardians of the minor. The registrar shall make the appropriate entry of **JM** in the adopted children's register. **JM** shall also be presumed to be a Kenyan Citizen.
15. It is so ordered.

DATED, SIGNED AND DELIVERED AT KISII THIS 23RD DAY OF SEPTEMBER, 2021.

A.K. NDUNG' U

JUDGE