



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

ADOPTION CAUSE NO. 3 OF 2018 (OS)

AND

IN THE MATTER OF THE CHILDREN'S ACT (NO. 8 OF 2001)

AND

IN THE MATTER OF BABY AT

AND

AN APPLICATION FOR ORDERS OF ADOPTION OF BABY AT

BY

EWW

JUDGEMENT

1. By the Originating Summons dated 22.2.18, the Applicant EWW seeks to adopt a child known as Baby AT. The Applicant is a single woman born on 25.7.67 in Mombasa. Following assessment by KKPI Adoption Society, the Applicant was found to have met all the requisite legal and social requirements. The case sitting on 30.7.14 did approve the Applicant as suitable and fit to adopt a female child. Thereafter Baby AT also known as DK was placed with the Applicant on 21.2.15.

2. Baby AT also known as DK is estimated to have been born on 26.4.14 in [Particulars withheld] Market, Tharaka Nithi County to one M, a mentally ill woman who was a victim of rape. It is reported that women from Tharaka Hawkers & Marketeers Association received information that a mentally ill woman had given birth to a baby girl. They took the woman and child to a hospital. The matter was reported at the Children's office and a place was secured for the child at New Life Home Trust for temporary care and protection pending committal. The matter was also reported at Mitunguu Police Station vide Occurrence Book Number [...]. The Children's Court at Nkubu, did on 23.5.14 *vide* Protection and Care Case Number 10 of 2014 formally commit the child to New Life Home Trust for a period of 18 years or until further orders of the Court. Nkubu Police Station in a final letter dated 11.12.14 confirmed that since the child was reported abandoned on 21.5.14, no one had come forward to claim her.

3. When the matter first came to this Court for hearing on 4.4.18, CMM was appointed as guardian *ad litem* for the child pending the hearing and determination of the adoption application, in accordance with Rule 8 of the Adoption Rules. The Applicant has gone through the requisite assessments, and reports in respect thereof have been duly filed. The report by KKPI and Little Angels Network which arranged the adoption of the child was filed on 4.4.18 In compliance with Section 156 of the Children Act, Little Angels Network by its certificate serial number 001595 declared the child free for adoption on 6.2.15. For the Director of Children Services, Philip Nzenge, the Mombasa County Children Coordinator, filed his report on 11.10.19 while that of CMM, the guardian *ad litem* dated 26.9.18 was filed on 3.10.18. All these reports are favourable and recommend the adoption of the child by the Applicant.

4. I note that the child has been in continuous care and control of the Applicant for a period of about 5 years which is more than the statutory 3 months required under Section 157 of the Act. The Applicant is not younger than 25 years nor older than 65 years. She is more than 21 years older than the child. Section 158 of the Act has thus been complied with. The Applicant has been made aware of the consequences of an adoption order as well as the rights of an adopted child. She shall assume all parental rights and duties of the biological parents in respect of the child. I am satisfied that she fully understands that the adoption order is final and binding during the lifetime of the child and that the child shall have the right to inherit her property. The Applicant cannot under any circumstances give up the child. The Applicant has demonstrated that she has the psychological and emotional capacity as well as the material resources to raise the child in a loving home

environment. From my observation in Court the child appears to have bonded well with the Applicant. She proposes to name the child EMW.

5. The Court noted that by a letter dated 19.5.14 to the Imenti South District Children Officer the Tharaka Hawker & Marketeer Association stated that the child had been born to a mentally ill woman. Given that the biological mother of the child is known, the Court directed that she be traced so that a psychiatric assessment be done and a report or consent be filed. KKPI filed a report stating that they did, on 6.2.2020, in the company of Titus Kinua Njuri, the chief of Makandune Location, Mitunguu Dicism, visit the father of MM, the biological mother of the child. The father, OMM confirmed that his daughter was mentally challenged and he had not seen her for a long time. He stated that he was not in a position to take care of the child. In his letter dated 6.2.2020, the Chief confirmed that MM is the biological mother of the child. He stated that for the last 2 years, MM has not been seen. MM's father ID No. [...] has no ability to take care of the child and accepted that she be adopted. In his letter dated 6.2.2020, Stephen K. M'auanua, chief of Kirendene location also stated that MM has not been seen for the past 2 years.

6. In view of the foregoing and pursuant to the provisions of Section 159 of the Act, I hereby dispense with the consent of the biological mother and grandfather of the child who both abandoned the child for a period of over 6 months.

7. In the end, this Court has formed the opinion that it would be in the best interest of the child to be adopted by the Applicant. The Court is further satisfied that all the legal requirements for a local adoption have been met and makes the following Orders as prayed in the Originating Summons herein:

- a) The Applicant EWW, holder of national identity card number [...] is hereby allowed to adopt Baby AT also known as DK, who shall henceforth be known as EMW.
- b) I direct the Registrar General to enter this order in the Adoption Register.
- c) CMM, the guardian *ad litem* is hereby discharged.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 28TH DAY OF FEBRUARY 2020

.....

M. THANDE

JUDGE

In the presence of: -

..... **for the Applicant**

..... **Court Assistant**