



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
ADOPTION CAUSE NO. 11 OF 2019
IN THE MATTER OF THE CHILDREN'S ACT (ACT NO. 8 OF 2001)
IN THE MATTER OF AN APPLICATION FOR AN ADOPTION ORDER IN RESPECT OF BABY JK
B N W.....APPLICANT

JUDGMENT

1. By an Originating Summons dated 7th February 2019 filed pursuant to Sections 154, 156, 157, 158, 159, 160, 163, 164 and 170 of the Children's Act, BNW (hereinafter "the applicant") moved this court for orders that;

1. The Applicant be authorized to adopt JK a minor who is to be known as VWN and the Registrar General be directed to enter this adoption into the Register of Adoptions.

2. That ANW be appointed as the legal guardian of the minor.

3. The child be presumed to have been born in Kenya.

2. The application is premised upon facts contained in a statement and materials in support. The applicant is a widow whose husband died in 2010. She is a Kenyan citizen born 1968 and has been blessed with one biological son one LG born on 12th May 2010. To earn a living, the applicant is a business lady engaged in the sale of second hand clothes at Gikomba Market.

3. Her desire to adopt the baby has been propelled by the urge to balance her family; reluctance to mix children from different fathers and the urge to give love to a child in need of love.

4. Concerning the baby, she was found around Nyamakima area having been abandoned by an unknown person while aged one and half years. The incident was reported to the media via public notice sent out for anybody interested or claiming the baby to come forward. The matter was reported at Kamukunji Police station vide O.B No. xx/xx/10/09. Subsequently, the baby was referred to Nairobi Children's Home and later to Imani Children's Home.

5. On 24th July 2017, Nairobi Children's Court formally committed the baby to Imani Children's Home for Protection and Care vide **Protection and Care Case No. 459/2011**. The committal period having expired, the same was extended on 24th July 2017 for a further period of three years. By a letter dated 28th September 2017, Kamukunji Police Station confirmed that, every effort to trace the parents and or relatives to the baby had not born any fruit.

6. With this confirmation, and six months having lapsed since the abandonment, the process for adoption became inevitable. Consequently, the child was declared free for adoption on 29th September 2017 by Bucker Kenya Adoption Services during its Case Committee meeting held the same day. She was placed under the care and control of the applicant on 19th November 2017 for a mandatory continuous period of three (3) months.

7. Despite every effort to trace the parents and or relatives, the same has been futile. This is evident from the Kamukunji Police Station's initial letter and final letter dated 13th October 2009 and 28th September 2017 respectively confirming that nobody had laid claim over the baby.

8. The process of adoption having commenced, Mary Nyambura Kimani was on 14th March 2019 appointed as a guardian ad litem and the Director Children Services directed to file Evaluation and Assessment Report within 45 days.

9. Preceding the hearing, the Director Children Services, guardian Ad litem and Bucker Kenya Adoption Services filed their respective reports dated 10th February 2020, 25th February 2020 and 14th March 2019 thus recommending the adoption in the best interest of the child. Both reports described the applicant as financially stable, a Christian with no criminal record and mentally, socially, emotionally and physically fit.

10. I have considered the application herein, material placed before the court and various testimonies by the witnesses. The issues for consideration are;

a. Whether the child is available for adoption.

b. Whether the applicant is fit to adopt the baby.

c. Whether the adoption is in the best interest of the child.

11. The minor who is presumed to have been born on 13th March 2008 was found abandoned within Nyamakima Market while aged one and half years. Concerted effort by the police and the Children's Department have not yielded any positive results.

12. In the absence of any person laying claim over the minor and considering that the child was found abandoned while aged about one and half years, Article 14(4) of the Constitution comes to play. According to Article 14(4), a child found in Keya 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 dint of this provision the child is deemed to be a Kenyan citizen.

13. Under Section 157(1) of the Children's Act, any child who is a resident within Kenya may be adopted whether or not the child is a Kenyan citizen, was or was born in Kenya.

14. In this case the child is above six (6) weeks and below 18 years which is the requisite age bracket for a child to be adopted in compliance with Section 156 of the Children's Act. She has been declared free for adoption and subsequently placed under the control and care of the applicant. Considering that nobody has come forward to claim the child and further considering that the child is a Kenyan citizen and a resident within Kenya, she is available and qualified to be adopted.

15. Regarding the suitability of the applicant the adoptive mother, she is an adult aged between 25 years and 65 years which is the recommended age bracket for any adoptive parent in compliance with Section 158 of the Children's act. She has been recommended by all stakeholders who described her as a Christian with no criminal record and physically, mentally, morally and emotionally fit. She is also financially stable generating about Kshs. 30,000/- per month out of her second hand clothes' business.

16. The applicant fully understands and acknowledges the consequences of adoption and that it is permanent. She has fully bonded with the minor and thus appreciates that the child will be treated like her biological child enjoying all rights accruing to a biological child including inheritance of her estate upon her death.

17. This being a local adoption, I am satisfied that the applicant has met the requisite legal conditions for adopting a child.

18. Whether the adoption of the baby is in the best interest of the child, this court is duty bound to uphold the best interests of a child principle which is underpinned under Article 53(2) of the Constitution and Section 4(2) and (3) of the Constitution. Given the circumstances under which the baby was found and taking into account that nobody has come forth to claim the child, the best interests of the child will demand that any action taken in relation to the child must be that which propagates her welfare, growth and future development just like any other child with his or her biological parents.

19. The child is in need of basic necessities like food, clothing, shelter, education, medical care, parental guidance, love and care. All these are available under the care of the applicant who has been with the child since placement. The child has fully integrated with the applicant's family. To return the child to the Children's Home where there is no hope of ever getting parental care and provision of basic necessities will render the child's future hopeless. It is in her interest that she be adopted so as to have some generational identity and eliminate the general stigma of being homeless.

20. Accordingly, it is my holding that the application herein is merited and the same is geared towards advancing the best interest of the child and therefore allow the same with orders as follows;

a. That the applicant is hereby authorized to adopt the baby herein.

b. That the child's name shall henceforth be VWN.

c. That the child's date of birth shall be 13th March 2008 and place of birth Kamukunji Nairobi County.

d. That consent of her parents or relatives shall be dispensed with.

e. That the Registrar General is directed to enter this adoption order in the adopted Children's Register.

f. That the guardian ad litem is discharged.

g. That ANW is hereby appointed as the legal guardian in the event of any eventuality or death of the applicant.

DATED, DELIVERED AND SIGNED IN virtually AT NAIROBI THIS 29TH DAY OF SEPTEMBER 2020.

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J. N. ONYIEGO

JUDGE