



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 81 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 JP

PWN.....APPLICANT

JUDGMENT

1. PWN herein referred to as the applicant moved to this court pursuant to Sections 154, 156, 159, 161, 163 and 170 of the Children's Act seeking orders as follows;

- (i) That the child herein be presumed to be a Kenyan citizen by birth.
- (ii) That the Director of Immigration be authorized to issue the child with a Kenyan Passport.
- (iii) That the Applicant PWN be authorized to adopt the child to be known as JTN.
- (iv) That KMM and PNN be appointed as the legal guardians of the child in the event of the death or incapacity of the applicant before the child is of full age and fully self -reliant.
- (v) That the Registrar General do make an entry of this adoption in the adopted children register.
- (vi) That the court be pleased to make any further orders it deems necessary.

2. The application is grounded upon a statement of particulars together with supporting materials. The applicant is a Kenyan single lady aged 32 years. She has never been married although open to marriage should an opportunity arise. She has neither been blessed with any biological child nor has she adopted one before. She is a Degree holder majoring in Chemistry and currently working with [particulars withheld] as a Customs Officer.

3. The motivation to adopt a baby has been prompted by the desire to be a mother; the urge to love, nature, support a child and the need to contribute to society.

4. Regarding the minor JP, aged two (2) years and nine (9) months by the time this suit was filed, she was found by a good samaritan on 14th April 2017 having been abandoned at a place known as Kabiria Kwa Maji wrapped in a dirty towel and put inside a paper bag. The good samaritan named as Pholoice Kangeki rescued the child and then reported the matter to Riruta Police Station.

5. According to the initial Riruta Police Station letter dated 14th April 2017, the incident was booked under O.B. No. X/X/X/2017. Subsequently, the baby was admitted at New Life home Trust for protection and care.

6. On 8th August 2018, Children's Court Milimani formally committed the child to New Life Home Trust vide **Protection and Care Case No. 459/2019** for a period of three (3) years.

7. Despite every effort to trace the parents or close relatives to the minor, there was nothing positive. This is evidenced by the police final letter dated 3rd November 2017 from Riruta Police Station.

8. Following the expiry of six months without anybody laying claim over the baby, the process of adoption commenced in compliance with Section 159(1) (a) (i) of the children's Act. vide a case committee held on 10th September 2018 by the Little Angels Adoption Society, the minor was declared free for adoption and a Certificate S/No. 602009 issued. She was subsequently placed under the care and control of the applicant.

9. Upon instituting these proceedings, JPC was on 19th September 2019 appointed as guardian ad litem pursuant to the Chamber Summons dated 13th June 2019. The Director Children Services was then directed to file an Assessment Report within 45 days.

10. Prior to the hearing, the Director Children Services filed his Evaluation and Assessment Report dated 8th January 2020. Equally, the guardian ad litem filed his on 13th February 2020. On their part, Little Angels filed their report on 17th October 2019. Both reports recommended and supported the adoption herein. The reports described the applicant as; financially stable being a senior employee working with [particulars withheld] earning Kshs. 193,000/-; owns landed properties at Mai Mahiu, Nanyuki and Athi River; has no criminal record and is a Christian who is mentally and physically fit.

11. I have considered the application herein, supporting material, stakeholders' reports recommending the adoption and the best interest of the child. In the circumstances, the only issues for determination are;

(a) Whether the child is available for adoption.

(b) Whether the applicant is suitable to adopt the baby and;

(c) Whether the adoption is in the best interest of the baby.

12. The minor herein was found having been abandoned on the road side while inside a paper bag wrapped in a dirty towel. The good samaritan who was gracious enough rescued the baby presumed to have been born the same day (14/4/2017) and reported the incident at Riruta Police Station.

13. Every effort by the Police to trace the minor's parents or relatives could not bear any fruit. This is supported by the initial and final Riruta Police Station aforesaid letters. Equally, the Children Department and the Little Angles Adoption Society made every effort to trace the parents but it was all in vain.

14. Since nobody has laid claim over the baby, the child is deemed to be a Kenyan citizen by dint of Article 14(4) of the Constitution of Kenya which provides that;

“a child found in Kenya 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 birth.”

15. Accordingly, by virtue of the above provision, the minor herein is deemed to be a Kenyan citizen. Having held that the minor is a Kenyan citizen, Section 157 (1) of the Children's Act does recognize that,

“Any child who is resident within Kenya may be adopted whether or not the child is a Kenyan citizen, was or was not born in Kenya.”

16. The child is above 6 weeks and below 18 years being the age bracket of a child sought to be adopted. She has been declared free for adoption and placed under the care and control of the applicant for a consecutive period of 3 months as provided for under Section 157(1) of the Children's Act.

17. Since nobody has come forward to claim the baby and considering the provisions of Article 14(4) of the Constitution and the other relevant provisions already quoted under the Children's Act, I am convinced that the child is available and qualified to be adopted. The requirement for consent from her parents or relatives is therefore not necessary.

18. Concerning the suitability of the applicant, she is an adult aged between 25 and 65 years with an age difference of at least 21 years with the adoptive baby pursuant to Section 158 of the Children's Act. She is financially stable; physically, emotionally and mentally fit. She is also a Christian with no criminal record.

19. She has been recommended by both stakeholders. Her extended family relatives are in support of the adoption. She understands the consequences of adoption and that it is permanent. Since placement the child has fully bonded with the applicant. She is a Kenyan citizen thus qualifying the adoption to be a local one. Based on the assessment of the applicant by all stake holders and further considering this court's own assessment, it is my conviction that the applicant has met the requisite conditions to adopt the baby.

20. As to whether the adoption is in the best interest of the minor, Article 53(2) of the Constitution and Section 4(2) and (3) come to play. Under the two provisions, the underpinning factor or paramount consideration before making any decision or determination affecting a child is the best interests of a child principle.

21. The minor was found on the road side under circumstances suggesting that she was meant to die on delivery. However, the Little Angel fell in the hands of a good Samaritan who rescued her. It is no wonder that the parents have not bothered to look for her. Were it not for the good samaritan, the baby could not be living. Considering that nobody has laid claim over her, she is entitled to parental care and love. She deserves parental guidance, mentoring and provision of basic necessities like food, shelter, clothing, education and generational identity.

22. Having fully integrated with the applicant and considering that she has no other place to call home, I am duty bound to find that the adoption herein is in her best interest.

23. Having found that all necessary legal requirements have been fulfilled, I have no option but to find the application herein as merited and the same is allowed with orders that;

- (a) **The applicant herein is allowed to adopt baby JP who hence forth shall be known as JTN.**
- (b) **That the child shall be deemed to have been born on 14th April 2017.**
- (c) **That the child be and is hereby deemed to be a Kenyan citizen and her place of birth shall be Riruta Nairobi County.**
- (d) **That the consent of her biological parents or guardian be and is hereby dispensed with.**
- (e) **That the Registrar General is directed to enter the adoption order herein into the adopted children's Register.**
- (f) **That the Director Immigration Department shall issue the minor with a Kenyan Passport.**
- (g) **That the guardian ad litem is hereby discharged.**
- (h) **That KMM and PNN be and are hereby appointed as legal guardians in the event of any eventuality befalling the applicant or death of the applicant before the child attains age of majority.**

DATED, DELIVERED AND SIGNED IN OPEN COURT AT NAIROBI THIS 24TH DAY OF SEPTEMBER, 2020.

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J. N. ONYIEGO

JUDGE