



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

ADOPTION CAUSE NO. 96 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 WAK alias GS**

**NWK.....APPLICANT**

JUDGMENT

1. NWK herein referred to as the applicant moved this Court vide an originating Summons dated 8<sup>th</sup> July 2019 and filed the same day seeking orders as follows;

- (1) That the applicant NWK be authorized to adopt the child currently identified and known as Baby G.S.**
- (2) That the child be named WAK.**
- (3) That the child be presumed to be a Kenyan citizen, including being issued with a Kenyan Passport whenever desired.**
- (4) That the Registrar General to make the appropriate entries in the adopted children's register.**
- (5) That this Court do issue such further orders as are in the interest of justice.**

2. The application is supported by a statement of particulars dated 8<sup>th</sup> July 2019 and an affidavit sworn the same day by the applicant.

3. The applicant herein is a Kenyan single female adult aged 44 years. She is a [particulars withheld] by profession working with [particulars withheld]. Her motivation to adopt the baby has been prompted by the desire to have a family and someone she can call her own. She is a committed Christian and also feels the call to help a needy child.

4. Regarding the baby, she was born on 22<sup>nd</sup> June 2015 at Emuhaya Sub-District Hospital. Her mother DA then aged 14 years and father WBO aged 25 years are relatives although the exact relationship is not stated. The alleged relationship meant that the child was born out of an incestuous relationship which according to the Luhya customs is a taboo hence the reason for giving away the baby to a children's home for purposes of adoption.

5. Consequently, on 23<sup>rd</sup> June 2015, the family to the minor's mother approached Emuhaya Sub-County Children's Officer seeking help to surrender the child for adoption. Having signed necessary consent, the family voluntarily surrendered the child for adoption. The baby was admitted and placed at New Life Home Trust Kisumu on 23<sup>rd</sup> June 2015 for Protection and Care.

6. On 27<sup>th</sup> July 2016 and 2<sup>nd</sup> September 2016, BMU the child's maternal grandfather and WBO the child's biological father signed six weeks legal consent which was adopted after duly understanding the explanatory memorandum for biological parent or guardian.

7. Subsequently, the minor was formally committed into the legal custody of New Life Home trust vide **Protection and Care Case No. 53/2015** by the Principal Magistrate's Court at Maseno for a period of 3 years. The child having been offered for adoption by her biological parents with the concurrence of the maternal grandparent, the process of adoption commenced.

8. Through its case committee sitting held on 30<sup>th</sup> September 2016 the Little Angels Network Kenya declared the child free for adoption and a Certificate S/No. \*\*\*\* issued to that effect. The child was then placed under the care and control of the applicant pending finalization of

the adoption proceedings.

9. Vide a Chamber Summons contemporaneously filed with the Originating summons, AM was on 19<sup>th</sup> September 2019 appointed as *guardian ad litem* and the Director Children Services directed to file an Assessment and Evaluation Report within 45 days.

10. Prior to the hearing of the substantive application, the Director Children Services filed an evaluation report dated 9<sup>th</sup> December 2019 thus recommending the adoption. Equally, the *Guardian Ad Litem* filed her Assessment Report dated 31<sup>st</sup> October 2019 also supporting the adoption. The Little Angels Adoption Society submitted their Assessment Report dated 6<sup>th</sup> July 2018 approving the adoption. Both stakeholders described the applicant as: financially stable; is a committed Christian with no criminal record; morally upright; physically, mentally and emotionally fit; responsible and understands the consequences of adoption orders. They further stated that the adoption was in the best interest of the child.

11. During the hearing, the applicant urged the court to allow the application and grant her the opportunity to adopt the baby who had fully bonded with the adoptive mother's family. She acknowledged and confirmed that; she understands the consequences of the orders sought; the orders are permanent in nature and that, the child will have a right to inherit her property just like any other biological child.

12. I have considered the application herein, stakeholders' reports and the applicant's testimony. Issues for determination are:-

**(i) Whether the baby is legally available for adoption;**

**(ii) Whether the applicant is fit to adopt the baby and;**

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

13. The minor herein who is alleged to have been born out of an incestuous relationship is a Kenyan by birth aged above six weeks and below 18 years. Under Section 157(1) of the Children Act, 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. The child was given out by her biological parents and maternal grandparents after signing the requisite consent forms.

14. The reason given for giving out the baby was that it is a taboo according to Luhya community to bring up a child born out of an incestuous relationship. Since the baby is a Kenyan citizen as per the Birth Certificate attached, aged above six (6) weeks and below 18 years in compliance with Section 156 (1) of the Children Act, and further considering that the Applicant is a female, I have no doubt the baby is available and qualifies for adoption.

15. Concerning the question whether the applicant is suitable, she is a Kenyan citizen hence qualifying the adoption to be a local one. She is aged between 25 and 65 years being the legally recognized age bracket for an adoptive parent pursuant to Section 158 of the Children Act.

16. Besides, she has been recommended by all stakeholders that she is financially stable; medically fit, a Christian with no criminal record and a responsible person who understands her parental responsibility obligations. Being a female seeking to adopt a female child, the applicant has by all means met the requisite criteria for adopting the baby.

17. As regards the question whether the adoption is in the best interests of the baby, the court is guided by Article 53(2) of the Constitution and Section 4(2) and (3) of the Children Act which recognizes the paramount principle that, in every matter concerning a child, courts or any administrative institutions are bound by the best interests of a child. The child deserves basic provision like food, education, medical care, shelter, clothing, parental care and love. In a community where children born out of incestuous relationships are regarded as a bad omen to society, anything including the risk of the child's life may arise. She is entitled to be brought up in an acceptable, loving and friendly environment. She also deserves parental guidance and care for her full development and growth as a normal child like anybody else.

18. It is therefore in her best interest that she be adopted so that she can enjoy all basic necessities, and have generational identity besides having property to inherit. See C.M.S v. I.A.K HC Misc. Appl. No. 526/2008 where the Court stated that:-

**“.. the right of the child to parental care takes precedence, in my view, particularly in light of the cardinal constitutional principle set out in Article 53(2) that in matters such as this, the paramount consideration is the best interests of the child.”**

19. Having held as above, it is my finding that the application is merited and the same is allowed with orders that;

**(a) The applicant is hereby authorized to adopt baby G.S who henceforth shall be known as WAK.**

**(b) That the child's date of birth shall be 22<sup>nd</sup> June 2015.**

**(c) The child is presumed to be a Kenya citizen.**

**(d) That the Registrar General shall enter the adoption order in the Adopted Children's Register.**

**(e) That the guardian ad litem is hereby discharged.**

**(f) That LWM and AM shall be the legal guardians to the baby in the event of the applicant's death or any eventuality**

befalling her thus rendering her incapacitated.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 24<sup>TH</sup> DAY OF SEPTEMBER 2020.

J. N. ONYIEGO

JUDGE