



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

FAMILY DIVISION

ADOPTION CAUSE NO.7 OF 2019

IN THE MATTER OF PW (MINOR)

AWN.....APPLICANT

JUDGMENT

1. The applicant herein moved this court vide the Originating Summons dated 29.03.2019. The said application was brought under section 157 (1) and 158(1) of the Children's Act and Rule 4 and 14 of the Adoption Rules and seeking for orders that-

a) That the consent of the infant's natural parents be dispensed with

b) That the applicants be authorized to adopt PW (infant). Prayer No. 1 in the Originating Summons was granted On 16/10/2019 with one LWG being appointed guardian *ad litem*

2. The application was supported by the applicants' affidavit wherein she adopted her statement in support of the application. In a nutshell, it was the applicant's deposition that the minor herein was born on 02.12.2016 to unidentified mother and was found abandoned at [Particulars withheld] village Kirinyaga County and which case was reported to Gathoge Police Station and the minor committed to Embu Children's Home for safe custody and care. Further that the applicant is employed by the Public Service and as such she has stable income and are able to provide the minor with stable family environment. A copy of her National Identity Card was annexed to the application. The applicants further deposed that the infant whom she sought to adopt was put in their care and possession on or about 20.04.2018 and she had completed the necessary forms with the D.O.E Embu Children's Home who had no objection to the adoption.

3. The report of the County Children's Officer and the Kenya Adoption Society were duly filed as directed by the court.

4. The Adoption Society in their report dated 12.11.2017 recommended that the minor herein is available for adoption and that adoption would be for its best interest. A certificate to declare the child free for adoption was attached to the said report. The Proposed guardian *ad litem* further filed a Report dated 8.112019 recommending the adoption by the applicants.

5. From the foregoing, the issue for determination is whether the Applicants have made a case for grant of the orders sought.

6. The power to make an adoption order is bestowed upon this court by virtue of section 154(1) of the Children's Act.

7. Section 156 of the Children's Act requires that for any arrangement to be commenced for the adoption of a child, the said child should be at least six weeks old and has been declared free for adoption by a registered adoption society in accordance with this rules prescribed in that behalf.

8. Section 157 further provides that any child who is resident within Kenya may be adopted whether or not the child is a Kenyan citizen, or was or was not born in Kenya. However there is a proviso under the said section that no application for an adoption order, shall be made in respect of a child unless the child concerned has been in the continuous care and control of the applicant within the Republic for a period of three consecutive months preceding the filing of the application and both the child and the applicant or applicants, as the case may be evaluated and assessed by a registered adoption society in Kenya.

9. Section 158(1) further requires that in an application for adoption and where there is joint application (as it is in this case) at least one of the joint applicants must have has attained the age of twenty-five years and at least twenty-one years older than the child but has not attained the age of sixty-five years; or (b) is a relative of the child; or (c) is the mother or father of the child. Section 158 (2)-(4) further provides for further conditions which applicants ought to comply with in filing the application for adoption. Amongst those conditions is the consent by the parent. However, section 159 gives this court the powers to dispense with the said consent in the case of the parents or guardian of the child, that he has abandoned, neglected, persistently failed to maintain or persistently ill-treated the child.

10. The consent to an adoption order in respect of the infants herein by Sr. Teresia Wanjiku Mburu, the Administrator of D.O.E Embu Children's Home indicates that the minor herein was born on 2.11.2016. As such, at the time of the application, the minor was more than six (6) weeks old. The minor was also declared free for adoption by the said Ripples International. The applicants deposed to the effect that the minor was received in their care and possession on or about 20.04.2018 and thus the minor herein had been in the continuous care and control of the applicant for a period of three consecutive months preceding the filing of the application. The applicant annexed to the application copies of her national identity card and wherein it was indicated that they were born on 10.10.1973 as thus she had attained the age of twenty-five years and at least twenty-one years older than the child. The applicant in this case has not attained the age of sixty-five years. The record shows that the minor herein was abandoned at Mwamba village Kirinyaga County and the mother was not traced. As such, the consent by the parent is hereby dispensed with by virtue of section 159.

11. It is my considered opinion that the foregoing facts demonstrate that the applicants have made a case for the issuance of the orders sought.

12. I find the application merited and grant orders in terms of prayers 2 and 3 of the Originating Summons.

13. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 17TH DAY OF NOVEMBER 2020.

F. MUCHEMI

JUDGE