



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 177 OF 2018 (O.S)

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

IN THE MATTER OF AN APPLICATION FOR ADOPTION OF A MINOR SAB

BY

MMO

JUDGMENT

1. The single Applicant MMO is a Kenyan citizen. She has been married to E O for a period of over twenty (20) years having solemnized their marriage under Luo Customary Law on 18th March, 1995. They have five (5) biological children. She and her husband wish to adopt the child known as AAB, a minor of the female sex through the Originating Summons dated 16th July, 2018. The Applicant is a Program Management Officer with the [particulars withheld].

2. Records indicate that the minor is a niece to the Applicant having been borne by the Applicant's sister who died on 23rd December, 2011 when the minor was one (1) year old. Since her biological mother's demise, the minor has lived with the Applicant and her husband as their own child. The whereabouts of the biological father of the child are unknown since he abandoned his family after the child was born.

3. Prior to the hearing of the adoption application, Change Trust Adoption Society prepared and filed a report dated 12th April, 2018. They also issued a Certificate of Serial No. xxxx declaring the child free for adoption.

4. On 28th December, 2018 Mr. Macharia, counsel for the Applicant, filed a Children Officer's Report dated 27th August, 2014 which was prepared by the Sub-County Children Officer in Westlands pursuant to a court order dated 22nd August, 2014. The report recommended the adoption for reasons that it was in the best interest of the child since the Applicant and her husband have been the child's sole custodians and guardians since her biological mother's death. It established that the Applicant and her husband are financially and emotionally capable of providing for the child.

5. The Applicant and the child were not present during the hearing. They appeared before Muigai J on 13th December, 2018 for appointment of Guardian ad litem whereupon the Judge directed that they would not need to appear again since they live in Ethiopia where the Applicant is stationed. The rest of the process was dispensed with as the matter was filed under certificate of urgency and the minor was discontinued from school in Ethiopia awaiting proof that the Applicant is the lawful parent.

6. The orders sought by the Applicant relate to a child. In law, in any matter concerning a child, the best interests of a child are paramount. **Article 53(2)** of the **Constitution** provides the guiding principle on this question as follows:

“A child's best interests are of paramount importance in every matter concerning the child.”

The other pertinent law is the **Children Act No. 8 of 2001** and in particular **Section 4(3)** thereof which amplifies this principle.

7. This is a local adoption and from the record the Applicant has fulfilled all the legal requirements relating to the adoption of the child. The Applicant is aged 54 years and therefore meets the parameters of **section 158(1)(a)** of the **Children Act**. The consent of the child's biological father was dispensed with since his whereabouts are unknown. Whereas there is no written consent from the Applicant's spouse, I note that the Applicant and her husband were on 18th December, 2014 appointed the guardians of the child vide an order of the Children's Court at Nairobi in a Children's Miscellaneous Cause No. 148 of 2014. I note further that the Applicant's husband is present in the child's life and is actively involved in her life as shown in the Children Officer's report.

8. I have perused the entire record and find that the Applicant and her husband meet the social parameters that are considered relevant to their taking on parental responsibility and custody of the child in this matter on a permanent basis as would be conferred by the adoption order

sought.

9. From the foregoing, this court has formed the opinion that it is in the best interest of the child to be adopted by the Applicant. Reasons wherefore, I allow the prayers sought in the Originating Summons dated 16th July, 2018 and order as follows:

- i. The Applicant M M O is hereby allowed to adopt **AAB** who shall henceforth be known as **SAB**.
- ii. Her date of birth shall be 6th September, 2010. She was born in Kenya and the place of birth shall be Siaya Township.
- iii. PJO (the Applicant's son) is hereby appointed legal guardian of the child in the event that the Applicant dies or is incapacitated by ill-health.
- iv. The Registrar General is directed to enter this order in the Adoption Register.
- v. The Director of Immigration is hereby authorised to issue the child with a Kenyan passport.
- vi. The guardian ad litem is hereby discharged.

It is so ordered.

SIGNED DATED and DELIVERED in open court this **24th day of January, 2019.**

.....

L. A. ACHODE

HIGH COURT JUDGE