



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 181 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 BABY FP

BY

ABW (APPLICANT)

JUDGMENT

1. The Applicant AB Were is a Kenyan citizen. The Applicant is currently single but was previously married to one JT with whom she has since separated. The Applicant has one biological child, MTW aged 35 years who is a medical doctor and lives in Morocco. She also previously fostered one WBT who is now aged 21 years and lives in Qatar.
2. The Applicant wishes to adopt the child known as Baby FP, a minor of the female sex through the Originating Summons dated 23rd November, 2018. From the pleadings, the court gathers that the Applicant is a Human Rights Lawyer with African Women Forum and is financially stable.
3. The child who is the subject of this adoption was rescued by a Good Samaritan having been abandoned at the premises of a Catholic Dispensary in Kariobangi area, Nairobi on 5th May, 2003 and referred to the Missionaries of Charity Children's Home. The matter was later reported to Kariobangi Police Post where it was recorded vide OB NO. [Particulars withheld]. The child was committed to the care of Missionaries of Charity Children's Home - Huruma on 3rd May, 2006 through the Children's Court at Nairobi vide P&C Case No. 345/2006.
4. The Kariobangi Police Post confirmed vide a final letter dated 15th March, 2007 that no one had come forward to claim the child and efforts to locate the parents of the child had proved futile. On 10th June, 2016 the Applicant took the child into foster care with a view of adopting. An Infant Release Form Agreement was signed by the Applicant on 10th June, 2016.
5. Prior to the hearing of the adoption application, Buckner Kenya Adoption Services prepared and filed a report dated 28th February, 2019. They had also issued a Certificate of serial no. [Particulars withheld] dated 1st November, 2013 declaring the child free for adoption. The guardian ad litem LPM prepared and filed a report dated 15th February, 2019 which was favourable and recommended the adoption of the child by the Applicant.
6. An officer from the office of the Director of Children's Services conducted home visits and established that the Applicant is financially and emotionally capable of providing for the up keep and education of the

child. She filed a report dated 30th January, 2019 recommending the adoption for reasons that the child stands to gain from the opportunities provided by becoming a daughter of the Applicant as opposed to living all her life in an institution as an abandoned child.

7. The Children's officer noted that the Applicant has met all the legal requirements for a local adoption. That it is therefore in the best interest of the child to be adopted by the Applicant.

8. 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 62 years and therefore meets the parameters of **section 158(1)(a)** of the **Children Act**. The consent of the child's biological parents was dispensed with since the child was abandoned at infancy and the parents could not be traced to give the consent.

9. The child was in court during the hearing and appeared to have bonded well with the Applicant. She was calm and clearly seemed to trust the Applicant. The child is aged 16 years and currently in standard eight (8). She gave a brief testimony in court in which she stated her wish to be adopted by the Applicant and that she regarded the Applicant as her mother. The Applicant's family members are aware of the proposed adoption and support it. Her daughter MTW has also consented to the adoption and supports it.

10. The Applicant has appointed her brother PW and his wife PW to be the legal guardians of the child and both parties have consented to be appointed as such.

11. It is important to note that the orders sought by the Applicant herein relate to a child. In any matter concerning a child the best interests of a child are what is of paramount importance as provided for under **Article 53(2)** of the **Constitution** and **section 4(3)** of the **Children Act No. 8 of 2001**.

12. After a careful assessment of the reports filed herein and from the observation of the interaction of the Applicant and the child during the hearing, this court has formed the opinion that it would be in the best interest of the child to be adopted by the Applicant. Not only does she gain a loving mother, she also gains siblings.

13. Reasons wherefore, I allow the prayers sought in the Originating Summons dated 23rd November, 2018 and order as follows:

i. The Applicant, Alice Betty Were is hereby allowed to adopt **Baby FP** who shall henceforth be known as **FP**.

ii. Her date of birth shall be presumed to be 10th September, 2002. She is presumed to have been born in Kenya in accordance with **Article 14(4)** of the **Constitution**, and the place of birth shall be Nairobi.

iii. PW and PW, are hereby appointed legal guardians 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 **28th day of March, 2019**.

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L. A. ACHODE

HIGH COURT JUDGE