



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 286 OF 2015

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

AND

IN THE MATTER OF APPLICATION FOR THE ADOPTION OF

BABY DA

AND

ORIGINATING SUMMONS OF AN APPLICATION FOR AN ADOPTION ORDER

LWN.....APPLICANT

JUDGMENT

1. The Applicant in this Case LWN (hereafter referred to as the Applicant) has applied to this Court by way of this Originating Summons dated 24.11.2015 seeking orders that the Applicant be authorized to adopt Baby DA (hereafter referred to as the Child).
2. The Child was born on or about 1.1.2013. She was found abandoned on 2.1.2013 in a bush at Kimelei Village at SAOS Location, Koibatek District.
3. The matter was reported at Eldama Ravine Police Station vide OB No. [particulars withheld] and Good Samaritans rushed the child to Eldama Ravine District Hospital.
4. The Child was subsequently admitted to New Life Home Trust for Care and Protection vide Care and Protection Case No. [particulars withheld] by the Resident Magistrate's Court at Eldama Ravine.
5. The child was declared free for adoption by Little Angels Network Adoption Society Vide Certificate No. [particulars withheld] dated 17.7.2013.
6. The Applicant is a female single lady aged 47 years who is a business woman and is self-employed earning Ksh.30,000/- per month from her hardware shop and farming.
7. The following reports were filed herein.
 - (a) A report by Director of Children Services dated 17/05/2017.
 - (b) A report by the Little Angels Network Association dated 17.7.2013.
 - (c) A report by the Guardian Ad Litem dated 17.7.2012.
8. I have considered the application herein, affidavits in support and testimony by both applicants plus materials placed before the court. Issues for determination are:

a. Is the baby herein available for adoption?

b. Have the applicants met the requisite conditions for adoption?

c. Is the adoption in the best interests of the baby?

9. On 18.4.2018, the Court directed that the Applicant files a Supplementary Affidavit setting out the exact and true position in relation to the age of the Applicant, her mental status, age, residence and income.

10. The Director of Children's Services was also directed to conduct a further home visit to confirm the details forwarded.

11. The Applicant has not filed any supplementary Affidavit and neither is there any further report by the Director of Children's Department.

12. Is the adoption in the best interests of the baby" The best interests of a child principle is aptly captured in the Kenyan **Constitution Article 53 (2)** which provides:

"A child's best interests are of paramount importance in any matter concerning a child".

Besides the constitution, Section 4 (2) and (3) of the Children's Act reinforces the same principle.

Sub Section 2 provides:

"In all actions concerning children whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration".(See – In Re AW alias AN (a child) (2008) I KLR (G and F).

13. Two out of three of the conditions have been met. However, the applicant has not satisfied the court by meeting all the requisite conditions which were required of her.

14. I direct that this matter be mentioned after 30 days for compliance.

DELIVERED, DATED AND SIGNED IN OPEN COURT THIS 26TH DAY OF APRIL, 2019

ASENATH ONGERI

JUDGE OF THE HIGH COURT OF KENYA, NAIROBI.