



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

ADOPTION CAUSE NO. 5 OF 2018

IN THE MATTER OF THE CHILDREN ACT

(Act No. 8 of 2001

AND

IN THE MATTER OF BABY FL

IN THE MATTER OF AN APPLICATION FOR ADOPTION BY

APPLICANT-IWM

RULING

1. This application is brought by way of Originating Summons' both dated 3rd March 2018. The Applicant **IWM** through her advocates Kimenyi & Co Advocates seek the following orders:

In the first application

1. THAT GVC of P.O. Box Number xxxx-00100 Nairobi be appointed the Guardian ad litem in the cause; and

2. THAT the Childrens Services Department, Ministry of Labour and Social Services do investigate the Applicants' fitness to adopt or otherwise and file a report in respect thereof

In the subsequent application, the following orders were sought

1. THAT the Applicant be authorized to adopt the child BABY FL.

2. THAT the child be renamed as DM.

3. THAT this court to declare that the child's Date of Birth is 20th October 2013 and his Place of Birth is Mbagathi District Hospital, Nairobi County.

4. THAT the Child be presumed to be a Kenyan Citizen, and as a consequence, be entitled to the rights and benefits of a Kenyan Citizen

5. THAT consequent upon an order or presumption of Kenyan Citizenship, the child be issued with a post adoption Certificate of Birth and a Kenyan Passport whenever desired.

6. THAT MNW and WMW (Applicant's sister and husband) be appointed Legal Guardians of the child in the event that the applicant herein is incapacitated or in any way unable to discharge her parental obligations.

7. THAT the Registrar General makes the appropriate entries in the Adopted Children Register and do issue a certificate to that effect.

8. THAT the court do issue such further orders as are in the interest of justice.

2. In the preliminary stage, prayer 1 and 2 in the initial application were granted by the court.

3. The Applicant **IWM** was born in 1972 and is a resident of [particulars withheld], Kangundo Road and she owns her own restaurant called [particulars withheld]. She was married to EM between 1997 to 2005 and they separated for she did not have a child. She is not planning to get married at all and seeks to adopt the child. She received the infant under their custody as from 6th August, 2017 and fostered him since then.

4. **MNW and WMW** wrote a letter dated 3rd February, 2017 to confirm consent to act as Legal Guardian and that they have no objection to the Applicants adopting **Baby FL**.

5. **Baby FL** was born on 20th October, 2013 at Mbagathi District Hospital and abandoned by his mother after she passed away on 29th October, 2013. After staying at Mbagathi Hospital, he was delivered to Happy Life Children's Home on 11.12.2013 whereupon he was committed to the custody and care of the said home by the **Senior Resident Magistrate Nairobi Children's Court via P& C No. 66 of 2014**.

6. On 10th April, 2015, **Baby FL** was declared free for adoption vide certificate issued on the said date and was placed in the care of the applicant from 6th August, 2017.

7. On 9th October, 2018 this Court directed the Director of Children Services do investigate the applicants' fitness to adopt and file a report.

8. Nathan M. Kyule is the Sub-County Children's Officer, Kangundo, and Matungulu Sub - Counties. He conducted a Social Inquiry on the Applicant by visiting and interrogating them at her home on 26th November, 2018. It was observed that the Applicant has not been able to get her own biological child. She has taken care of **baby FL** and bonded well with the said minor who seemed to have bonded well with her and thus this adoption would be in his best interests. His conclusion is that the applicant has demonstrated ability to maintain baby **FL**. On 23rd November, 2018, Nathan M. Kyule, the Sub-County Children's Officer, Kangundo, Matungulu filed a favourable report as to the suitability of the Applicant to adopt baby **FL**.

9. On 4th December, 2018, **JK** appeared in court to recommend the applicant's application and to have the report dated 7.3.18 confirming the suitability of the applicant to be adopted in the proceedings. **MNW and WMW** appeared before me on the same date to confirm and rely on the contents of their affidavits and willingness to take up their duties as well as recommend the applicants to adopt baby **FL**. The applicant also appeared before me on the said date and relied on her affidavit to support the application and confirmed her readiness to care for the minor. The report by the children officer is quite favourable on the Applicant and I am persuaded by the same.

10. This court is satisfied that the Applicant is a suitable person to adopt Baby **FL** and that she is financially stable and has the means to provide and care for him. With regard to the declaration on citizenship, date of birth and place of birth, the applicant shall follow the procedure as required at the Registrar of Persons and Immigration Department after the court has made its orders.

For the above reasons, the Court orders as follows;

1. THAT the Applicant **IWM be and is hereby authorized to adopt Baby **FL** to be known as **DM**.**

2. THAT **MNW and WMW be and are hereby appointed Legal Guardians of the minor.**

3. THAT the Registrar-General do make in the Adopted Children Register an entry recording the adoption in accordance with the particulars set out in the Schedule to this order.

4. THAT the Guardian Ad Litem is hereby discharged.

Dated and delivered at Machakos this 26th day of April, 2019.

D.K. KEMEI

JUDGE