



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

ADOPTION CAUSE NO. 76 OF 2013

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

AND

IN THE ADOPTION OF BABY C (MINOR)

MWKAPPLICANT

JUDGMENT

1. The Originating Summons dated 20th March 2013 and filed on 5th April 2015 is brought pursuant to Sections 154, 16(1), 157(1), 159 (4), 160, 163, 64 and 170 of the Children's Act seeking:

- (a) That RW of C/o Post Office Box Number 452 Thika in the Republic of Kenya be appointed guardian ad litem.**
- (b) That the Director – Children's Department, Office of the Vice President and Ministry of Home Affairs investigates the applicant's fitness to adopt and file a report.**
- (c) That the applicant be authorized to adopt Baby C. to be known as MNW.**
- (d) That JNT be appointed legal guardian of the child.**
- (e) That the Registrar General be ordered to enter the child's name in the adoption register.**
- (f) That the court be pleased to make any further orders it deems necessary.**

2. The said application is predicated upon grounds on the face of it, statement of particulars and affidavit in support. By Chamber Summons dated 13th September 2016 and filed on 14th September 2016, GNN was appointed as guardian ad litem to the baby on 15th September 2016 after substituting the original guardian ad litem one J. The Director Children Services was directed to file assessment report within 45 days.

3. The applicant herein is a single parent who is a Kenyan citizen born 1970. She has never been married. She is a business lady dealing with cereals. She has not been lucky however to have a baby of her own hence the motivation to adopt.

4. The minor herein who is presumed to have been born sometime 18th August 2011 was found abandoned on the 27th of September 2011 at Anex Guest House in Mlolongo by a Good Samaritan (Eunice Kioko). The incident was immediately reported at Mlolongo Police Station vide OB No. 37/27/09/2011 and thereafter the officers escorted the baby to Thomas Barnados home where she was admitted as a child in need of protection and care on 29th September 2011.

5. On 27th February 2017, the baby was formally committed to the said home vide protection and care case No. 20/12 Nairobi Children's Court.

6. The baby was declared free for adoption on 24th April 2012 and thereafter placed with the applicant for custody, care and control for a mandatory 3 months period preceding these adoption proceedings pursuant to Section 156 of the Children's Act.

7. Prior to the hearing, the Kenya Children's Home adoption society, Children department and guardian ad litem filed their evaluation and assessment reports dated 7th March 2013, 13th July 2015 and 20th August 2015 respectively thus recommending the adoption. However, the

adoption society and children's department had one reservation to the adoption touching on the proposed legal guardian's age. They urged the court to consider that the legal guardian who is in her 50s is likely to die earlier than the applicant.

8. During the hearing, the applicant pleaded with the court to allow her adopt the baby. She confirmed having understood the consequences of adoption and that the same is permanent.

9. Both stake holders described the applicant as a responsible parent who is financially stable earning between Kshs.20,000 – 30,000/= per month out of her cereals business. She owns rental rooms at Thika in an 80 x 50 ft plot earning her 18,000 per month and that she is a Christian with no criminal record.

10. I have considered the application herein, supporting affidavit attached to the statement of particulars and affidavit in support. The baby herein was abandoned in a room in a hotel within Mlolongo. Every effort to trace the biological parents or any other close relatives has borne no fruit. As evidenced from the police Mlolongo first and final letters dated 29th September 2011 and 27th March 2012 respectively, nobody has laid claim over the baby.

11. The minor is aged now about 8 years old hence satisfies the age criteria of 6 weeks to 18 years as the adoptive age limit for a minor pursuant to Section 158 (1) of the Children's Act. The requirement for consent from the adoptive parents vide Section 159(1) of the Children Act is no longer tenable as the biological parents or close relatives are not known. The baby has been in continuous care of the applicants for a period of over 3 months since placement having been declared free for adoption on 24th April 2016.

12. It is my finding that the child who was found abandoned in a hotel is a Kenyan citizen by virtue of Article 14 of the Constitution which presumes as such any child below 8 years found within the Kenyan soil whose parents or nationality is not known. The baby is therefore fit for adoption.

13. Regarding the applicant, she is a Kenyan citizen aged 44 years now. She has been evaluated and found to be a Christian with free criminal record, responsible parent who is morally, mentally, religiously, psychologically and physically fit. She is financially stable and has shown tremendous care for the baby. She has fully integrated with the minor who refers to her as mum. I have no doubt the baby is in safe hands. She has gotten a home and family to stay with hence reclaimed her generational identity.

14. It is my conviction that the adoption herein is in the best interests of the baby which is underscored under Article 53 (2) of the Constitution and Section 4 (2) and (3) of the Children's Act. She needs food, shelter, clothing, education, medical care and parental care all of which are now available with the applicant. However, I have taken into consideration of the Children department reservation concerning the age of the legal guardian who is aged 50 years. I do not see anything wrong with that. Even young people die before old people. There is no age limit prescribed in law for a legal guardian. The fear expressed here is not tenable in the circumstances.

15. Having held as above, it is my holding that the applicant has met the necessary requirements for the adoption herein to be allowed to adopt the baby. Accordingly, application is allowed with orders as follows:

(a) That the applicant herein MWK be and is hereby authorized to adopt baby C who henceforth shall be known as MNW.

(b) That consent of the biological parents is hereby dispensed with.

(c) That the baby's date of birth shall be 18th August 2011 and place of birth Mlolongo Machakos County Kenya.

(d) That the Registrar General is allowed to enter the adoption in the adopted children's register.

(e) That the guardian ad litem is hereby discharged.

(f) JNT applicant's sister is hereby appointed legal guardian in the event of death of the applicant or any eventuality befalling her.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 17TH DAY OF APRIL, 2019.

J.N. ONYIEGO

JUDGE