



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 43 OF 2015 (O.S)

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

IN THE MATTER OF AN APPLICATION FOR ADOPTION OF DW

BY

AWM (APPLICANT)

JUDGMENT

1. The Applicant AWM is a Kenyan citizen. She is single and has never been married but had previously cohabited with a foreigner for a period of two (2) years between 2006 and 2008. The Applicant has one biological child, AWM aged 39 years who is a nurse by profession and lives in the United States of America.
2. The Applicant wishes to adopt the child known as DW, a minor of the female sex through the Originating Summons dated 6th February, 2015. From the pleadings, the court gathers that the Applicant is a Nursing Assistant with [particulars withheld] in Colorado, in the United States of America and is financially stable. She is a resident of Colorado State in the United States where she intends to live with the minor whom she proposes to adopt. She visits Kenya twice every year and each visit lasts for a period of one (1) month.
3. Records indicate that the minor is a niece to the Applicant having been borne by the Applicant's maternal cousin, AWM who died on 30th July, 2013 when the minor was aged six (6) years. Since her biological mother's demise, the minor has been in the care of the Applicant and they have developed and maintained a strong child-parent relationship. The whereabouts and identity of the biological father of the child are unknown. His consent was therefore dispensed with.
4. Prior to the hearing of the adoption application, Child Welfare Society of Kenya prepared and filed a report dated 16th February, 2015. They had also issued a Certificate of serial no. 0736 dated 30th January, 2015 declaring the child free for adoption. The guardian ad litem F D A O prepared and filed a report dated 18th March, 2019 which was favourable and recommended the adoption of the child by the Applicant.
5. 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 12th March, 2019 recommending the adoption for reasons that it is in the best interest of the child who is orphaned and has no stable family. She noted that the Applicant is capable and willing to provide the child with a home, parental love and a sense of belonging which are critical at this stage of her development.
6. The Children's officer observed that even though the Applicant is resident in the United States, she has met all the legal requirements for a local adoption as provided under the **Children Act, 2001**. That it is therefore in the best interest of the child to grant the adoption orders as sought by the Applicant.
7. 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 Applicant's family members are aware of the proposed adoption and support it. Her daughter AWM has also consented to the adoption and supports it.
8. According to the **Guidelines for Alternative Family Care of Children in Kenya page 153**, "kinship adoption is adoption by adopters who are kin or relatives within the extended family of the child." The Applicant in this case is a maternal aunt to the child and is a Kenyan citizen. This is therefore a local adoption and the Applicant, in my opinion has fulfilled the requirements for a local adoption under the **Children Act, 2001**.
9. P I M and H G N have by a joint affidavit sworn on 19th January, 2015 consented to be appointed the legal guardians in the event that the Applicant is incapacitated and cannot care for the child.

10. Since the orders sought by the Applicant herein relate to a child, the best interests of the child must take center stage being 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**.

11. 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.

12. In the premise, I allow the prayers sought in the Originating Summons dated 6th February, 2015 and order as follows:

i. The Applicant AWM is hereby allowed to adopt the child known as **DW** who shall henceforth be known as **DWW**.

ii. Her date of birth is 11th July, 2007. She was born in Kenya and the place of birth shall be Murang'a.

iii. PIM and HGN 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 **10th day of April, 2019**.

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L. A. ACHODE

HIGH COURT JUDGE