



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

ADOPTION CAUSE NO. 53 (A) OF 2019

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

AND

IN THE MATTER OF APPLICATION FOR THE ADOPTION OF

BABY LW

MNM.....APPLICANT

JUDGMENT

1. The Applicant herein MNM. (Hereafter referred to as the Applicant) filed the Originating Summons dated 25.3.2019 seeking authority to adopt Baby LW (hereafter referred to as the child).
2. The Applicant is a Kenyan adult born on 26th June 1986 currently resident in Norway and is an Aunt to the child.
3. The Applicant is married to Mr. AE and they have one biological daughter NN Aged 13 years old. Both her husband and her biological daughter have consented to the adoption.
4. The Applicant is nurse by profession and she earns a salary of Ksh.300, 000/- per month and she is financially stable and able to take care of the child's physical and financial needs.
5. The Applicant is also healthy and she has no criminal record as evidenced by her Medical Report and Certificate of good conduct.
6. The Applicant felt the desire to adopt the child following the demise of the child's mother on 8th March 2019. The biological father of the child is not known and both grandparents of the child are deceased.
7. The Child's biological mother was a first cousin to the Applicant and therefore this is a kinship adoption.
8. The child herein LW was born on 6.9.2013. Her Birth Certificates is attached to the Supporting Affidavit to the Originating Summons.
9. The following reports were filed in respect to this adoption.
 - i. The Guardian Ad Litem's filed on 6.11.2019.**
 - ii. The Report by Change Trust Adoption Society dated 20.3.2019**
 - iii. The Director Children Services Report dated 6.11.2019.**
10. I have considered the originating summons together with the Reports filed here. I find that the Applicant has met the threshold for adoption of the child.
11. This is a Kinship Adoption as the applicant is related to the child since the child's biological mother was a cousin to the Applicant.
12. Lady Justice Achode **In re J N A [2018] eKLR** held that ;

“The indefinite moratorium issued by the Kenyan cabinet on 27th November, 2014 involved inter-country and resident adoptions of Kenyan children by foreigners. It does not affect adoptions by Kenya applicants, even those living abroad. Dual citizenship in our country is anchored in Article 16 of the Kenyan Constitution.

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.” Kenyans living abroad and wishing to adopt a Kenyan child will adopt as Kenyans by way of domestic adoptions. This is therefore considered to be a local adoption.”

13. The biological father of the child is not known and therefore the child is considered a total orphan.

14. In the matter of L.O (CHILD)[2012] Eklr the court stated that :

“For the avoidance of doubt, the rights and duties of the biological parents of the child are hereby extinguished and all the parental rights, duties, obligations and liabilities of the child, J. M. M. , now vest in and shall be exercisable by and enforceable against the Applicants as the adopter parents as if the child were born in wedlock to the adopter parents and the child, to all intents and purposes, now stands to the adopter parents as a child born in wedlock and both adopter parents shall henceforth be the lawful father and mother of the child.”

15. I find that it is in the best interest of the child that the Applicant be allowed to adopt her in order to give her a home and to look after her.

16. I accordingly allow the Originating Summons dated 25.3.2019 in the following terms:

i. THAT the Applicant be and is hereby authorized to adopt LW

ii. THAT the name of the Child shall remain LW

iii. THAT the Registrar General be and is hereby directed to enter this adoption order in the Adopted Children's Register.

iv. THAT AK and AKN be and are hereby appointed legal guardians of the child in case of incapacity or death of the Applicant before the child attains the age of majority.

v. THAT the Guardian Ad Litem be and is hereby discharged.

Orders to issue accordingly.

DELIVERED, DATED AND SIGNED IN OPEN COURT THIS 22ND DAY OF NOVEMBER, 2019.

ASENATH ONGERI

JUDGE OF THE HIGH COURT OF KENYA, NAIROBI.