



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAJIADO (FAMILY DIVISION)**

**ADOPTION CAUSE NO. 3 OF 2018**

**IN THE MATTER OF AN APPLICATION FOR ADOPTION OF BABY K.N.**

**RULING**

Ms. J T U, the applicant herein moved this court by way of an originating summons dated 6<sup>th</sup> March, 2018 seeking an order of this court that she be authorized to adopt baby K N That upon granted the adoption orders the minor child be name as K K R which names the Registrar General should appropriately enter in the Register of births.

The originating summons was supported with an affidavit of the applicant J T U filed in court on 9<sup>th</sup> April, 2018. During the pendency of the proceedings the applicant was represented by Legal counsel Mr. Mbuthia Kinyanjui.

**Historical Background Leading to the adoption**

The minor child K N was born at Kenyatta National Hospital on 13<sup>th</sup> July, 2015 but her biological mother abandoned her immediately after birth at the same facility. The hospital administration reported the matter to Kenyatta Police Station vide OB No. [Particulars Withheld]. This placed the enforcement on high alert by initiating investigations to trace the mother but due to lack of any physical or mobile phone address or contact the biological mother as at the time of these proceedings remains unknown. The minor child was referred and committed to Happy Life Children's Home for protection and care for a period of three years

On 20<sup>th</sup> September, 2016 the applicant visited Happy Life Children's Home with a sole purpose of being allowed to foster the minor K N, which request was granted upon the organization being satisfied that she fulfilled the conditions precedent as a foster parent. In the course of her engagement the applicant became fond of the minor and therefore took steps to apply for an adoption order. Thereafter the applicant's suitability to adopt the minor was carried out by KKPI Adoption Society a duly licensed adoption agency by the state. It is apparent from the report filed in court and a further recommendation dated 29<sup>th</sup> January, 2016, it is not in dispute that the applicant was found to be fit, and proper person to adopt the minor K N. The agency having undertaken due diligence, background check and personal circumstances of the applicant confirmed that she possesses both the physical and financial resources to adequately provide for the minor during her tender years up to including her transition to adulthood.

In supporting the application the Director of Children Services in their report dated 18<sup>th</sup> June, 2018 applying the parameters expressed in the Children's Act on adoption confirmed that there is sufficient evidence to enable this court grant an adoption order in favour of the applicant.

**The Law**

The children's Act No. 8 of 2001 provides the overall legal and policy framework of overseeing the examination, qualifications and legibility criteria of the applicants seeking adoption orders of minors on behalf of the state. The Act in Section 4 emphasizes the advancement, survival and best interest of the child to be the main motivation behind the granting of adoption orders, by the court. In terms of Section 156 of the Act the pre-requisite for adoption are set out to include provisions that no arrangement shall be made for the adoption of a child unless the child is at least six weeks old and has been declared free for adoption by a registered adoption agency.

In Section 157 an adoption court shall not grant the order unless satisfied that the child proposed to be adopted is either a Kenyan citizen or was or was not born in Kenya. The issue to determine the child who may be adopted is indicated to be that he or she has been in the continuous care and control of the applicant within the republic for a consecutive three months preceding the filing of the application.

Further in terms of Section 158 provides important eligibility guidelines and criteria of prospective adoptive parents. When assessing the suitability of applicants the Children's Officer and the adoption agency must take into account the aspect of the age of the applicant or applicants not to be below thirty five years and at least twenty one years older than the minor and has not attained sixty five years. The section comes out stronger and recognizes certain categories of applicants who should be denied adoption orders unless the court is satisfied that special circumstances exist to justify the order. This includes:

***“A sole male applicant in respect of a male child. A sole female applicant in respect of a male child (c) An applicant or joint applicants who has or both have attained the age of sixty five years. (d) a sole foreign female applicant in terms of subsection 3 no adoption order shall be made to an applicant of unsound mind (b) has been charged and convicted by a court of competent jurisdiction for any of the offences set out in the third schedule to this Act or similar offences .....*”**

The Act under section 159 provides that the applicant must seek the necessary consent to the adoption order of the minor where applicable has been given by the biological parent, guardian or foster care home. The same Section requires and confers powers to the adoption court to dispense with consent to ensure the adoption is in the best interest of the child.

Mr. Kinyanjui learned counsel for the applicant submitted that considering the circumstances of the case the applicant is fit and proper person suited to provide a permanent and durable solution of the child K N . Mr. Kinyanjui further submitted and contended that the fundamental consideration both under the constitution and the statute is the principle on the best interest of the child before this court.

From the above provisions the system of child protection in Kenya under the constitution and the Children’s Act is underpinned by the principles of welfare and best interest being of paramount importance. A court may only make an adoption order that satisfies the constitutional and children’s Act threshold.

In my view there is solid evidence and cogent material presented by the adoption agency and directorate of children services that the minor K N was abandoned at birth. The survival factors and her best interest of being brought up by her natural parents and capacity to meet the needs such as physical, food, shelter, health, protection, care and educational needs are at risk.

In answer to the originating summons and in determining the applicant’s suitability as a fit and proper adoptive parent this court is bound by the survival and best interest principle set out in section 4 of the children’s Act.

From the material and evidence availed to this court the child K N particular needs, her likelihood of growing in a foster home, having ceased to be a member of the biological parent by virtue of her abandonment, the harm she is likely to suffer or having suffered to being abandoned at birth and her identity to a family which remains anonymous, the likelihood that any such next of kin or guardian will show up now or in the near future to provide her with a home, clothings, development and meet the very needs and rights as espoused in the children’s Act present sufficient cause why an adoption order should be granted to the applicant.

For these reasons I am satisfied that having considered wide range of factors the making of an adoption order in favour to the applicant is for the best interest of minor K N In the result the originating summons dated 6<sup>th</sup> March 2018 be and is hereby allowed with no orders as to costs.

Dated, signed and delivered in open court at Kajiado this 20<sup>th</sup> day of June, 2018.

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**R. NYAKUNDI**

**JUDGE**

In the presence of:

Mr. Kinyanjui for the applicant

The applicant

The legal guardian