



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

ADOPTION CAUSE NO. 159 of 2015

IN THE MATTER OF THE CHILDREN ACT 2001 AND

THE CHILDREN ADOPTION REGULATIONS 2005

IN THE MATTER OF AN APPLICATION FOR ADOPTION

AND IN THE MATTER OF BABY E a.k.a. AWN

PNN.....APPLICANT

J U D G M E N T

1. The Court has before it an Application for the Applicant to be authorised to adopt BABY E aka AWN. The Application is dated 19th June 2015 and was filed on the same day. It is brought under Section 154, 160 and 170 of the Children's Act No 8 of 2001. The Application seeks the following Orders:

1. ***1. THAT this Honourable Court be pleased to appoint EWK.... as guardian ad litem (Spent)***
2. ***2. THAT the Director of Children Services investigate the propriety of the Applicant's fitness to adopt the Child E a.k.a AWN (Spent).***
3. ***3. THAT the consent of the biological mother be dispensed with.***
4. ***4. THAT the Applicant be authorized to adopt E a.k.a AWN the Child***
5. ***5. THAT upon adoption the child be known as AWN***
6. ***6. THAT the Registrar-General do make an entry in the Adopted Children Register of this adoption***
7. ***7. THAT the costs of this application be costs in the cause."***

2. The Application is supported by the Statement of the Applicant. The Applicant is a Businesswoman who sells second-hand clothes in Gikomba in Nairobi. She is of Kenyan Nationality and African Origin. She has resided in Kenya since birth. She is single and has never been married. She has no biological children of her own. She says that she is a Roman Catholic by faith. She wishes to adopt a child because she cannot have children of her own. She also wishes to provide a home for a child. She has made no previous applications. She was born in Kiambu but now lives in [Particulars Withheld], Nairobi.

3. The Child, Baby E was born on 28th April 2013 at Pona Maternity and Medical Clinic Nairobi and was given up for adoption by her Mother, NWW. The Child's Mother gave her up for adoption when she was born because she was not able to care for her financially and had no assistance from the Child's Father. The Mother was given the necessary counselling and opportunity to withdraw her consent but she did not. The Consent was sworn before the High Court on 2nd July 2013. In the circumstances the Child was admitted to Mama Ngina Children's Home on 29th April 2013. Therefore, it is not clear why the Applicant seeks an order that the consent of the parent be dispensed with. Thereafter the Child was committed to the same institution through a Committal Order made by the Senior Resident Magistrate in the **Children's Court, Nairobi in P& C No 333 of 2013** on 16th September 2013. The Child was placed with the Applicant on 5th November 2013 for the statutory fostering period. However, the Child was declared free for adoption by the Child Welfare Society of Kenya, some time later on 12th June 2014 as set out in the Freeing Report filed with the Application. The Child Welfare Society also issued a Freeing Certificate dated the same day and bearing serial No [Particulars Withheld].

4. On 19th June 2015, the Hon Lady Justice M. Muigai appointed EWK to be the guardian ad litem of the Child for the purpose of these proceedings. The Learned Judge also directed that the guardian ad litem and the Director of Children services file their reports within 45 days thereafter. The Director of Children's Services filed his Report on 17th March 2017. The Guardian ad Litem's Report was filed on 7th June 2017.

5. The Guardian ad Litem records that she is a close friend of the Applicant and they are close confidants, having met at Church. However, in her statement she says that she has no interests adverse to those of the Child. She says she has been involved with the lives of the Applicant and the Child from the time the Child was placed with the Applicant. She says that the Applicant is happy with the Child. She also says that the Child attends kindergarten and Sunday school in [Particulars Withheld]. The Guardian's Report therefore must be weighed up against that closeness between the Applicant and the Guardian.

6. The Applicant would like to appoint her niece MWN 1 and if that is not viable, to appoint her sister, MWN 2. She has done so by Deed of Appointment. In fact, the Deed cannot take effect until **after** the Applicant obtains parental responsibility.

7. The Court has taken consideration of the Reports that have been filed. The Application does not exhibit a Certificate of Good Conduct, however, Child Welfare Society confirms that the Applicant has no criminal. the Court accepts that confirmation. The Child Welfare Society also states that the financial and housing needs of the Child can be met by the Applicant. The Applicant has the support of her family in this adoption. The Applicant understands and agrees that the Child will inherit from her.

8. The Director of Children's Services, notes in his Report that as the Child's own parent has relinquished parental responsibility, this is a child in need of alternative care. Such care is best given within a family. It is the assessment of the Director that the Applicant provides the Child with a perfect alternative family. It is said "In this proposed adoption, she stands to gain parents. She has flourished under the care of the prospective adoptive parent whom she has also bonded with. Adoption would certainly be in her best interests. She has bonded very well with the applicants.". The Director recommends that the Applicant be allowed to adopt the Child who will be renamed AWN.

9. This Court therefore makes the following Orders:

- (a) **THAT** the applicant **JWK** be authorized to adopt **BABY E a.k.a AWN**
- (b) **THAT** the Registrar General is directed make the appropriate entries on the register for Adoption.
- (c) **THAT** upon the issuance of the Adoption Order the child known as **AWN**
- (d) **THAT** **MWN 1** be appointed as a legal guardian of the minor.
- (e) **THAT** the child be presumed a Kenyan Citizen by birth.

Order accordingly,

FARAH S. M. AMIN

JUDGE

Dated and Signed at VOI this the 30th day of May 2018

J U D G E

DELIVERED DATED AND SIGNED this the 18th day of June 2018

In The Presence of :

Court Clerk: Wangeci

Counsel for Applicant: Ms Ndolo HB for Munyako