



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

ADOPTION CAUSE NO. 146 OF 2016

IN THE MATTER OF THE CHILDREN'S ACT 2011

AND

IN THE MATTER OF AN APPLICATION FOR ADOPTION BY JWK

AND

IN THE MATTER OF ADOPTION OF BABY M.T

JUDGMENT

1. This is an application for local adoption. The Applicant JWK is an adult female Kenyan citizen who is single and has one biological child of her own. I will refer to her as the Applicant or prospective adoptive parent.
2. The application was brought by way of Originating Summons dated 11th November 2016 and filed on 21st Nov.2016. It is brought under the Children Act sections 154,156,157,158,159,163 and 170. The summons is supported by the *statement* and *verifying affidavit* of the Applicant together with a bundle of materials filed on 21st November 2016s.
3. The minor is a boy now aged about four years. At the time of filing this application, he was two years old or thereabouts. His date of birth is estimated to be 1st November 2016.
4. The above mentioned baby boy was found abandoned at Njaus Lodging on 1st January 2015. The owner of the lodging reported the matter to Nyahururu Police Station vide OB No. 26/1/15. The baby was then taken to Nyahururu County Hospital for medical checkup. Investigations were carried out by the police to trace the biological mother but according to them, it has been fruitless and no one has come forward to claim the child as per the final police report from the police station. Upon his discharge the baby was admitted at New Life Home Trust Nyeri on 26th February 2015.
5. Subsequently, he was presented before the Children's Court Nyahururu on 26th February 2015 vide P and C case No.38 of 2015 where he was formally committed to the children's home. On 27th February 2015, he was transferred to New life Home Trust Kilimani Nairobi
6. The minor was declared free for adoption on 29th August 2015 vide certificate s/no [Particular Withheld] and then placed with the Applicant for a mandatory three months care and control on 16th November 2015 to date. The court on 11th November 2016 appointed ENG as Guardian ad item in respect of adoption of the child.
7. During the hearing, the Applicant confirmed that she had understood the finality and legal implications of an adoption order. She has lived with the minor for over three years since placement. She is a Kenyan citizen by birth and residing in Kilimani Nairobi County .She is self employed as a medical doctor earning a monthly income of about Kshs.300,000 and therefore able to comfortably provide for the financial and emotional needs of the said minor.
8. Various stake holders' reports filed before court confirmed that the Applicant is mentally, spiritually, emotionally, physically and financially stable. The Applicant is staying in her own house within Kilimani estate thus providing the baby a conducive environment for growth. The baby is assured of basic necessities like food, clothing, shelter, education, medical care and parental guidance
9. The prospective parent has confirmed that she understands the nature of an adoption order; that she will treat the minor like her child; and, that the child will inherit her property in the same manner as her biological child.

10. Section 154 of the Children Act vests the High Court with power to make adoption orders. I find that it is in the best interests of the minor that she be adopted by the Applicant. The Applicant has demonstrated her bona fides to be a good parent. I am satisfied that she has the emotional and financial capacity to raise the adopted child.

11. I am however cognizant of the fact that the subject herein is a male child and the Applicant is a female now aged 55yrs old. Section 158(2)(b) of the Children's Act does not allow adoption arrangements of that nature unless the court is satisfied that it would be in the best interests of the child. Before making any decision affecting the affairs of a child, a court or any other institution shall take into consideration the best interests of the child (**see Article 53(2)**). The baby herein was abandoned by the mother on the roadside. According to the police investigations, nobody has laid claim over the baby. To that extent, consent is dispensed with pursuant to section 159(1) of the Children Act.

12. Upon the grant of the adoption order, the Applicant shall assume all parental rights and duties of a biological parent. She shall treat the adopted child as her own. The adoption order is final and shall be binding during the lifetime of the child; and, the adopted child shall have the right to inherit the property of the Applicant. The Applicant cannot give up the child owing to unforeseen behavior or other changes in her character.

13. In the end, I am satisfied that the legal requirements for a local adoption have been met. I therefore grant the following orders-

(a) That the applicant be and is hereby allowed to adopt baby M. T.

(b) That the name of the child shall henceforth be MTNK

(c) That the effective date of birth shall be 1st November 2014 and place of birth Nyahururu Kenya.

(d) That the child is presumed to be a Kenyan Citizen.

(e) That the child is presumed to be a Kenyan Citizen.

(f) That the Registrar General is directed to enter this adoption order in the Adoption Register.

(g) That CMG be and is hereby appointed as the minor's legal guardian in the event that the Applicant is incapacitated; or, unable to exercise parental obligations.

(h) That the Guardian Ad litem be and is hereby discharged.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28TH DAY OF SEPTEMBER 2018

J.N. ONYIEGO

JUDGE