



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**FAMILY DIVISION**

**ADOPTION CAUSE NO. 14 OF 2017**

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

**AND**

**IN THE ADOPTION OF BABY JR (MINOR)**

**TI .....APPLICANT**

**JUDGMENT**

1. Through an amended Originating Summons dated 8<sup>th</sup> March 2018 filed on 19<sup>th</sup> March 2018 pursuant to Sections 154, 156, 157, 158 (1) (a) and (b) & (4), 159 (1) (4) and 160 of Children's Act, TI herein referred to as the Applicant sought orders to the effect that ;CWK be appointed as guardian ad litem to baby JR; the Applicant to legally adopt the minor JR who will henceforth be known as CDI; the baby infant be presumed to be a Kenyan citizen; the Registrar General to make appropriate entry of the adoption order in the adopted children's register; the Immigration Department to issue the minor with a Kenyan passport and, the Registrar of Births and Deaths do issue the minor herein with all the relevant documents evidencing her identity.
2. The application is premised on a statement in support of the application for an adoption order dated 13<sup>th</sup> February 2017 and an affidavit sworn the same day by the Applicant in person and filed on 23<sup>rd</sup> February 2018.
3. The Applicant herein is a female adult Kenyan citizen aged 50 years old. She is a single lady who has neither been married nor blessed with a child biological or otherwise. She is a [*particulars withheld*] working in the Ministry of Foreign affairs earning well over Kshs.xxxx per month. The motivation to adopt the baby is that she needs a child to love, desire to give back to society and the urge to provide for a needy child.
4. Concerning the baby, she was born on 24<sup>th</sup> December 2015 to Miss FIM a 28 year old mother at Nairobi Kenya. The child's mother who had separated but not divorced with her former husband conceived the baby now the subject of these proceedings out of wedlock. Being a taboo under Islamic law, the baby's mother decided to approach Change Trust Adoption Society for adoption of the baby.
5. After prolonged sessions of counseling, the mother opted to offer the baby for adoption hence left her at change trust offices. Despite every effort to convince her to stay with the baby, the mother was adamant. Subsequently, she signed a consent dated 2<sup>nd</sup> September 2016 being her final consent confirming that she had indeed relinquished the baby for adoption.
6. Consequently, the baby was placed at New Life Home Trust on 30<sup>th</sup> December 2015 where she was medically attended to for an eye infection. On 8<sup>th</sup> June 2016, the Children Officer Westlands Children's Office presented a report and the baby to the Children's Court Milimani for a formal committal order. vide P and C Case No. xxxx, the court committed the baby to New Life Home Trust on 6<sup>th</sup> July 2017.
7. The baby was declared free for adoption on 12<sup>th</sup> August 2016 vide certificate S/No. 150 and later placed under the mandatory three months care and control of the adoptive parent on 27<sup>th</sup> October 2016 after executing a care agreement of even date.
8. Having fulfilled the preliminary requirements for adoption, the Applicant moved the court for adoption of the baby. Through a Chamber Summons dated 8<sup>th</sup> March 2018 and filed on 19<sup>th</sup> March 2018, CWK was on 17<sup>th</sup> May 2018 appointed as guardian ad litem in compliance with Section 160 (1) of the Children's Act thus replacing IRN who had earlier on been appointed as such. The Director Children Services was also ordered to file an assessment and evaluation report within 45 days.

9. As directed by the court, the Director Children Services filed the assessment and evaluation report on 2<sup>nd</sup> November 2017, guardian ad litem filed hers on 2<sup>nd</sup> November 2017 and the Change Trust Adoption society filed theirs on 7<sup>th</sup> June 2017. In their respective reports, the Applicant was described as having a clean criminal record, medically, mentally, morally and socially fit. They all recommended the adoption. During the hearing, the Applicant pleaded with the court to allow her adopt the baby after confirming that she had understood the implications of adoption.

10. Having examined carefully the summons herein, affidavit in support, testimony by the Applicant and materials placed before court, three issues

emerge for consideration. Firstly, whether the baby is available for adoption; Secondly, whether the Applicant is suitable to adopt the baby and Lastly, whether it is in the best interests of the baby that the application be allowed.

11. The subject herein was born out of wedlock after a period of separation of her mother with the husband. It was alleged that according to Islamic religion, such a baby is not recognized in the society hence a taboo to the community. Out of shame, the mother voluntarily opted to offer her to Change Trust for adoption. Consequently, she went ahead and signed a consent dated 2<sup>nd</sup> September 2015 releasing the baby for adoption. Having been explained to the consequences of adoption together with her mother and sister, she made her final decision and released the baby.

12. The baby was declared free for adoption on 12<sup>th</sup> August, 2016 and has since been under the foster care and control of the Applicant. By the time this application was made, the baby was above 6 weeks and below 18 years in compliance with Section 156(1) of the Children's Act. The child being a female and a Kenyan by birth is eligible for adoption pursuant to Section 157 (1) of the Children's Act.

13. Is the Applicant suitable to adopt the baby? The Applicant is a Kenyan citizen aged 50 years old. She is therefore qualified in terms of age bracket which is between 25 years and 65 years old as a pre- condition under Section 158(1) of the Children's Act. Having been duly examined and recommended by the mandatory stake holders who found her morally, socially, economically and spiritually fit and stable, and this being a local adoption, I am satisfied that she has met the necessary requirements to adopt the subject.

14. Is the adoption in the best interests of the baby? Before any order or decision affecting or concerning a child is made, the paramount consideration must be the best interests of the child (**See Article 53 (2) of the Constitution and Section 4 (2) (3) of the Children's Act**). Although there is no standard or universally acceptable definition of what constitutes best interests of a child, Justice Kimaru had this to say in the case of **(M.A. vs R.O.) (2013) eKLR**:

**“what is the best interests of the child has not been defined by the law. This is as it should because the best interests of each particular child will depend on the circumstances of each particular case at any one particular time. What is not in dispute however is that there are certain minimum requirements of the child. This includes the right of a child to be provided with shelter, food, clothing and education. The child is entitled to medical care. The child's welfare should be taken care of under the best possible circumstances. The child is also entitled to parental guidance. This guidance shall, where possible, be provided by both parents. The child is further entitled to be given a suitable, conducive and loving environment in which to grow up”.**

15. Indeed the best interests of a child have not been defined under the parent Act, Constitution or even in the international instruments. The best interests of a child ultimately and certainly should be viewed from the lens that safeguards and makes provision for or meets basic necessities or requirements that guarantees the attainment of the basic needs of a child that is acceptable before the eyes of an ordinary person within a framework recognized in any one given environment and or society at any particular time. It then follows that what is in the best interests of a child in Africa may not necessarily be the best interests in America. It varies from society to society depending on the level of development of the society in reference hence the contextual application.

16. The Applicant herein has been in continuous care and control of the baby since placement. She is not a person of straw. She is financially stable earning a salary of over XXXX per month. She is staying in her own 3 bed roomed house at an up market estate within Nairobi with three domestic workers all attached responsibilities to take care of the baby besides other duties. She owns agricultural land in [xxxx]. The baby is occupying her own room thus offering her comfort and conducive environment for growth.

17. For all purposes and intents, the child who has fully integrated with the Applicant and her extended family will stand to benefit in all spheres of her life including provision of shelter, education, clothing, medical care, food, inheritance and parental guidance. Further, she will benefit from positive mentoring, psychological, emotional and spiritual upbringing. During the hearing, the baby and the Applicant appeared to have fully bonded as the baby kept referring to hers as mom.

18. I have no doubt that the Applicant and the baby need to share a home as mother and child. There will be no prejudice to anybody by allowing the application herein. Accordingly, application is allowed with orders as follows:

**(a) That the Applicant herein TI is authorized to adopt baby JR who henceforth shall be known as CDI.**

**(b) That the baby's date of birth shall be 24<sup>th</sup> December 2015 and place of birth Nairobi County, Kenya.**

**(c) That the Registrar General be and is hereby directed to enter the order in the adopted children's register.**

**(d) That the Director Immigration department to issue the child with a Kenyan passport.**

(e) That the guardian ad litem herein be and is hereby discharged.

(f) That MKM be and is hereby appointed as legal guardian to the child in the event of death or incapacitation of the Applicant.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 27<sup>th</sup> DAY OF SEPTEMBER, 2018.

J.N. ONYIEGO

JUDGE