



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
ADOPTION CAUSE NO 18 OF 2015
AND
IN THE MATTER OF THE CHILDREN ACT
AND
IN THE MATTER OF BABY D
P K N.....APPLICANT

JUDGMENT

The applicant is a Kenyan widowed female of sound mind, 35 years of age at the time of her application, and she seeks to adopt a child known for the purposes of these proceedings as Baby D. The Applicant has moved the Court in this regard by way of an Originating Summons dated 23rd July 2014 in which she sought the following orders in the said Originating Summons:

1. That the requirements of section 158(4)(a) of the Children's Act be waived as provided for by section 159(1) of the Act.
2. That CNB be appointed guardian *ad litem* in this case.
3. That the applicants be authorised to adopt baby Daniela and the baby be known as DNN.
4. That CM be appointed the legal guardian of the child.
5. That the Director of Children's Department do investigate the case and file a report.
6. That the Registrar General shall make in the adopted Children's Register an entry recording the adoption.

Prayers 2 and 5 were granted by this Court on 4th April 2016, and the outstanding prayers in the Originating Summons were to await full hearing.

A summary of these adoption proceedings is as follows. Baby D is a female child who was born On 21st December 2013 at Kenyatta National Hospital to sixteen-year old S K, who willingly offered the child for adoption, due to the fact that the child was conceived as a result of an incestuous relationship with an uncle. She signed a consent dated 22nd July 2014 as did her legal guardian, RAK, on 30th July 2014. The child's biological father, EO also signed a consent, as did his parents. These consents were attached to the declaration report dated 15th April 2015 which was filed in Court on 18th November 2015 by the Kenya

Children's Home Adoption Society.

Baby D was subsequently handed over to the custody of TB House on 23rd December 2013, and placed under the care and protection of TB House following a court order issued on 12th September 2014 by the Nairobi Children's Court. Baby D was declared free for adoption by the Kenya Children's Home Adoption Society by their certificate No. 1167 dated 15th October 2014.

The Applicant had approached the Kenya Children's Home Adoption Society on 2nd May 2014 with the intention of being ratified for placement with a girl child with a view to eventually adopting. She was placed with Baby Daniela on 29th October 2014 after a home study and approval as a suitable potential adoptive parent by the said Adoption Society.

The Applicant is currently a business lady at Sinai in Nairobi, and got married to her late husband on 29th November 2003 under the Marriage Act. She attached a copy of their marriage certificate. The Applicant's husband died on 5th November 2012 after they lived together for nine years, and before they had any child. The Applicant is desirous of adopting the child for reasons that they had decided on adoption with her late husband, after an unsuccessful surgery to address a medical condition that made her unable to conceive a child. In addition she would wish to adopt a child on whom she can bestow her legacy and take care of.

To facilitate this adoption, CNB and CM filed consents in Court to be the guardian *ad litem* and legal guardian respectively of Baby D. The Kenya Children's Home Adoption Society also prepared a report dated 15th April 2015 declaring the child free for adoption, which report was filed in Court on 18th November 2015. The said report was presented to the Court on 25th January 2017 by its maker, Mr. Peter Ndotono, and adopted as the Adoption Society's evidence in this cause. Damaris Kasyula, the District Children's Officer, Kangundo Sub-County, also prepared a report on the adoption application dated 20th January 2017, which was filed on, presented to and adopted by this Court on 25th January 2017.

The said reports observed that the Applicant had fully bonded with Baby Daniela, and that the child was well taken care of, in good physical health and was provided with the basic needs. Further, that the Applicant was ready and capable of taking care of, and educating the child, and recommended the adoption of Baby D by the Applicant. The guardian *ad litem* reiterated these sentiments in her report to the Court made on 25th January 2017. Lastly, the proposed legal guardian was also examined by the Court on the same date and found to understand her responsibilities.

Having evaluated the facts of this adoption application, I note that it is a local adoption and that the Applicant is a single female applicant who wishes to adopt a female child, which is allowed under section 158(1) and (2) of the Children Act. The consent of the biological mother and father of Baby Daniela and that of their respective guardians was also procured pursuant to section 158(4) of the Children Act. It is therefore evident that the Applicant has fulfilled all the legal requirements relating to the adoption of Baby D.

This court is also satisfied that the applicant is qualified and able to take care of the child. The home visits by the guardian *ad litem*, the Adoption Society and the Director of the Children Services established that the Applicant has the financial and emotional capability to provide for the upkeep and education of the child. The reports filed in Court pursuant to these visits also do recommend the adoption of Baby D by the Applicant. Lastly, this court observed the Applicant with Baby D in court, and it was evident that the two had bonded well.

This court therefore forms the opinion that it would be in the best interest of Baby D to be adopted by the Applicant. Consequently, the Applicant shall assume all parental rights and duties of the biological parents in respect of the adopted child, and shall treat the adopted child as if he was born to her. The Applicant has also been made aware that once the adoption order is made it shall be final and binding during the lifetime of the child, and that the child shall have the right to maintenance and to inherit their

property. The adoption order once made is absolute and irreversible, and the Applicant cannot give up the child owing to any subsequent unforeseen condition or other changes in the child.

I accordingly allow the application for adoption. The applicant, P K N is hereby allowed to adopt Baby D. The child shall henceforth be known as DNN. CM shall be the legal guardian of the child should such eventuality arise. As the child was born in Kenya, she is hereby declared Kenyan by birth. The Registrar-General is directed to enter this adoption order in the adoption register. I hereby also discharge the guardian *ad litem*.

It is so ordered.

Dated, signed and delivered in open court at Machakos this 21st day of March 2017.

P. NYAMWEYA

JUDGE