



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 30 OF 2017 (O.S)

IN THE MATTER OF BABY A ALIAS BABY A W (CHILD)

AND

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

AND

IN THE MATTER OF AN APPLICATION FOR ADOPTION BY R I J (APPLICANT)

JUDGMENT

1) R I J hereinafter referred to as the applicant moved to this court vide Originating Summons dated 14th March 2017 but filed in court on 14th March 2017 seeking orders as follows:-

- a) That R A O of P.O. Box 10413-00400, Nairobi be appointed Guardian ad Litem.
- b) That the Director Children's Department Ministry of Labour, Social Security and Services investigate the applicant's fitness to adopt and file a report.
- c) That the applicant be authorized to adopt Baby A W henceforth to be known as A S J.
- d) That the child be presumed to be a Kenyan citizen by birth.
- e) That the Director Immigration be authorized to issue the child with a Kenyan passport.
- f) That the Registrar General be directed to enter the adoption in the adopted children register.
- g) That the applicant's sister D N J and her husband, B W M W respectively be appointed legal guardians of the child.
- h) That the court be pleased to make further orders it deems necessary.

2) Application filed pursuant to Sections 154, 156(1), 157(1), 158(1), 159(1) (a) (i), (4), (6), (7), 160(1), (2), (3), (4), 161, 163, 164(1) and 170 of the Children's Act is based on grounds on the face of it and particulars of statement dated 14th March 2017 and filed on 20th March 2017.

3) The applicant herein a Kenyan single lady who has never been married, is aged 41 years old and currently working for [particulars withheld] as a Call Centre Executive earning a monthly total income of

KShs.212,000. She does not have any biological child save for an adopted child one M J whom she adopted on 19th November 2010.

4) Her motivation to adopt Baby A W is borne out of the desire and urge to have a child, to take care of a needy child and also the need for M J her previously adopted child to have a sibling.

5) The minor herein was found having been abandoned in a farm within [particulars withheld], Ruaka Location, Kiambu County. While going to gather animal feeds in her farm, W a good Samaritan heard a child crying and on checking out, she found a child of tender age estimated to have been born on 7th February 2015.

6) The child was taken to Rueno Police Post where the incident was reported as evidenced by the OB No. 14/9/2/2015 and police letter dated 9th February 2015. On 12th June 2015, the baby was presented before the Children's Court Kiambu vide Protection and Care Case No. 52/15 wherein she was committed to Jean Petty Legacy Home for a period of 2 years.

7) Every effort by the police to trace the parents or relatives of the child were futile hence the final letter dated 10th June 2016 from Rweno Police Post. Subsequently, Little Angels Adoption society conducted social inquiries and found out that the child had no known parents or relatives hence commenced adoption proceedings.

8) The applicant herein having expressed interest to adopt Baby W, entered a care agreement with Jean Petty Legacy Home on the 1st October 2016 and thereafter had the child placed under her care and control for a mandatory continuous period of three months in compliance with Section 157 of the Children's Act.

9) On 17th June 2016 through Little Angels Network Adoption Society's case committee, application was approved and recommendations made to free the child for adoption through certificate S/No.001705 dated the same day.

10) Upon filing the Originating Summons herein, the applicant moved the court under Chamber Summons dated 14th March 2017 for appointment of guardian ad litem wherein R A O was appointed as such.

11) Prior to the hearing, the guardian ad litem, director children services and Little Angels adoption society, filed various assessment and evaluation reports dated 31st May 2017, 21st August 2017 and 17th June 2016 respectively recommending the adoption. During the hearing, the applicant urged the court to allow her application expressing her desire to take care of the child just like her biological baby with the right to inherit her property. She further confirmed that she understood the consequences of adopting the minor and the attendant obligations. Both stake holders appeared in court and supported the application thus urging the court to allow the same.

12) I have considered the application herein, materials placed before the court and the relevant laws regarding adoption proceedings. issues for determination are:

(a) Is baby A W available for adoption?

(b) Has the applicant met the requisite requirements for adoption?

13) The minor herein was abandoned in a farm by unknown person and every effort to trace the parents and or relatives have not borne any fruit. This is clear from the 1st and final letters by the police dated 9th February 2015 and 10th June 2016 respectively. The net effect is that, the requirement for consent is therefore not applicable as required under Sections 158(4) and 159(1) of the children's Act hence the same is dispensed with.

14) The applicant is a Kenyan aged 41 years old hence qualified to apply for adoption on account of the age bracket of between 25 to 65 years in accordance with Section 158(1) of the children's Act. The child has fully integrated and bonded very well with the applicant. She has gained acceptance from the applicant's family members.

15) The applicant is a Christian, medically fit with no criminal record, has property among them a five bedroomed house, a car and Sacco shares worth 500,000/=. Her monthly income is about 212,000 per month hence an assurance of good and comfortable environment to live in, parental guidance and responsibility, good health, food, clothing and education.

16) This being a local adoption, the applicant has made the requisite conditions for adoption. It is in the best interests and welfare of the child that the application herein be allowed pursuant to the spirit of Article 53(2) of the Constitution and Section 4 (2) (3) of the Children's Act **(See- in Re BW (an infant) 2008 IKLR (G & F).**

17) Accordingly, am inclined to make a finding that application herein is merited and the same is allowed with orders as follows:

a) That the applicant be and is hereby authorized to adopt Baby A W who shall henceforth be known as A S J.

b) That her date of birth shall be presumed to be 7th February 2015 and her place of birth [particulars withheld] in Kiambu County within the Republic of Kenya.

c) That the child shall be presumed to be a Kenyan citizen and be accorded all rights that accrue to a Kenyan citizen.

d) That the registrar general shall enter this adoption order in the adoption register.

e) That the director Immigration department be and is hereby authorized to issue the child with a Kenyan passport.

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

g) That D N J applicant's sister and her husband B W M W be and are hereby appointed as legal guardians of the child in the event of death or incapacitation of the applicant.

SIGNED, DATED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 8TH DAY OF DECEMBER, 2017.

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J. N. ONYIEGO,

JUDGE

In the presence of:

Ms Kathungu holding brief for Ms. Kiguatha....Counsel for the applicant

Mr. Edwin.....Court Administrator