



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MILIMANI
ADOPTION CAUSE NO. 30 OF 2012 (OS)
AND
IN THE MATTER OF THE CHILDREN'S ACT
(NO. 8 OF 2001)
AND
IN THE MATTER OF M NW alias A (A CHILD)
JUDGEMENT

1. The applicant, F M M, is of Kenyan nationality. By her Originating Summons dated 15th February 2013, she seeks to adopt a female child called M N alias Baby A.
2. The subject child, M N alias Baby A, was born on 3rd May 2010 at the Pumwani Maternity Hospital to a young mother who gave her up for adoption for she had been conceived after an alleged rape committed by a known man. The biological mother has signed the relevant consents to give up the said child. The whereabouts of the father of the child are said to be unknown, although there is no indication as to whether any effort was made to find him or not. The child was placed with the applicant on 23rd June 2010 at the age of one month and half years.
3. This adoption is being arranged by the Child Welfare Society of Kenya adoption agency. The said adoption agency declared the child free for adoption through their certificate of 11th December 2013.
4. To facilitate this adoption, the applicant has been assessed by the Child Welfare Society of Kenya, the guardian *ad litem*, L P M and the Director of Children Services. All three have compiled and filed their reports in court. The report by the Director of Children Services dated 10th November 2014, while that by the Child Welfare Society of Kenya is dated 11th December 2013. The report of the guardian *ad litem* is dated 17th February 2015.
5. All these reports are favourable and recommend the proposed adoption. The applicant has demonstrated that she has the financial capacity and emotional capability and capacity to take care of the child. The child appears to have bonded well with her and she considers her to be her parent.
6. In the opinion of this court it would be in the best interests of the child that she is adopted by the applicant. The applicant will be able to provide a home and a family for the child to grow up in and thereafter become a useful member of the family and the society at large. Consequently, the applicant

shall assume all parental rights and duties of the biological parents in respect of the adopted child; she shall treat the adopted child as if she was born to her. The applicant has 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 inherit her property. The applicant cannot give up the child owing to any subsequent unforeseen behaviour or other changes in the child.

7. I note that the child was placed with the applicant long before she was freed for adoption. This was contrary to the provisions of the Children Act. A child should only be placed after she has been declared free for adoption, for without a certificate freeing her she cannot be said to be legally free for adoption and therefore available for placing.

8. I agree with the submissions of Mr Wamakobe, of the Directorate of Children Services, that placing a child before they have been freed for adoption does not augur well to the child's interests, for they are likely to bond with the prospective adopter and ordering that the child be taken back to the initial caregiver may not be in the best interests. Yet that is the scenario that the freeing agency presents to the court. It is unprocedural, smacks of incompetence on the part of the freeing adoption agency and it should be a practice that should to be discouraged.

9. Ideally, the court should decline to grant the adoption orders for the reasons stated hereabove, but doing so would in the circumstances be contrary to the interests of the child. The child in this case has been with the applicant since 2010, it would not do justice to the child to order that she should be taken away from the applicant.

10. Consequently, I hereby allow the applicant, F M M, to adopt M N alias Baby Angel to be known hereafter as L N M. I hereby appoint J M M, the child's legal guardian should misfortune befall the applicant during the child's minority. The child is hereby declared Kenyan by birth as he was born to known Kenyan parents. I direct the Registrar-General to enter this adoption order in the adoption register. The guardian *ad litem* is hereby discharged.

Dated, signed and delivered at Nairobi on this 17th day of April 2015.

W MUSYOKA

JUDGE