



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MILIMANI

ADOPTION CAUSE NO. 108 OF 2012 (OS)

AND

IN THE MATTER OF THE CHILDREN'S ACT

(NO. 8 OF 2001)

AND

IN THE MATTER OF S Y, A CHILD

RULING

1. M W M is a single applicant, who is Kenyan citizen. She seeks to adopt a female child, known for the purposes of these proceedings as S Y. Her Originating Summons is dated 29th May 2012, and was amended on 8th July 2013.
2. S Y was found abandoned within the Nairobi Central Business District on 29th October 2010. At the time she was estimated to have been four years old. A report of the matter was made at the Railway Police Station the same day. The child was placed at the Mama Ngina Children's Home at Nairobi for care and protection. She was later committed to the institution by the Nairobi Children's Court. Her biological parents have never been found. She was placed with the applicant, for the mandatory bonding period on 28th October 2011.
3. This background is set out in the statement in support of the application as well as the affidavit of the applicant verifying the statement, and in the documents prepared and filed in court by the Child Welfare Society of Kenya.
4. She was freed for adoption by the Child Welfare Society of Kenya by their declaration dated 16th May 2012.
5. To facilitate this adoption, the applicant has been assessed by the Child Welfare Society of Kenya, the Director of Children Services and the guardian *ad litem*, J M N. These three have compiled and filed their reports in court, dated 27th March 2012, 17th September 2014 and 1st October 2014, respectively.
6. All these reports are favourable and recommend the proposed adoption. The applicant has filed documents that demonstrate that she has the financial and emotional capability and capacity to take care of the child. The child appears to have bonded well with the applicant and she considers him to be her parent.

7. 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 be a useful member of the family. 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.
8. The Director of Children Services has raised a number of issues in his report as well as in the remarks by his representative in court. He otherwise recommends the adoption as long as the court is satisfied by the explanations (if any) that may be offered by the adoption society which arranged the adoption.
9. The first issue relates to the child's date of birth. The records availed do not indicate the approximate date of birth, and it would appear that the child was not seen by a doctor for age assessment. There is also concern that although it is alleged that the child was admitted at the Mama Ngina Children's Home there is no documentary proof thereof. There is also concern that there is no evidence that any effort was ever made to trace the parents of the child. I have noted too that the child was placed with the applicant before she was declared free for adoption.
10. In clarification of the issues raised by the Director of Children Services, the Child Welfare Society of Kenya, the adoption agency arranging the adoption, filed an addendum report on 9th October 2014, dated 26th September 2014. They state that the child was committed to the Mama Ngina Children's Home by the Nairobi Children's Court by its warrant of 21st March 2011, copy of which is attached to the addendum. There are also letters from the manager of the Nairobi Children's Home and the Railways Police Station requesting the adoption agency to have the child accommodated at the Mama Ngina Children's Home. The agency concedes that the records do not indicate the child's date of birth. On the matter of efforts to trace the child's parents, the agency states that the child appeared in the press several times but nobody came forward to claim her.
11. I am satisfied by the explanations given by the adoption agency on the matters raised by the Director of Children Services. I am concerned though that in quite a number of the adoption cases arranged by the Child Welfare Society of Kenya the children are placed with the prospective parents before they are declared free for adoption, with the freeing certificate being issued on a later date. This is improper and the society should desist from the practice.
12. Be that as it may, I note that the child has been with the applicant since 28th October 2011. It would be unwise to take the child away from the applicant at this stage. Such would not be in the best interests of the child.
13. Before I make the final orders in this matter, I direct that the age of the child be assessed by a qualified medical practitioner. The matter shall be mentioned after thirty days for further directions.

DATED, SIGNED and DELIVERED at NAIROBI this 19th DAY OF December 2014.

W MUSYOKA

JUDGE

In the presence of Ms. Mary Mwaura, in person.