



IN THE MATTER OF AN APPLICATION FOR ADOPTION OF BABY J.W

AND

V.W.K.....APPLICANT

RULING

In her Originating Summons dated 12th October 2011 and filed on 25th November 2011, V.W.K. sought seven orders namely -

(1) That N.N M of P. O. Box [...] Nakuru be appointed as guardian ad litem of Baby J.W during the hearing of these adoption proceedings.

(2) That the Director of Children Services in the Ministry of Home Affairs be directed to conduct investigations as to the suitability of the applicants to adopt Baby J.W and submit a report on their findings to court.

(3) That the consent of the biological parent of Baby J.W be dispensed with since the child was abandoned soon after birth.

(4) That the applicant be authorized to adopt Baby J.W and the child be known as J.M henceforth.

(5) That the Registrar-General do make the appropriate entries in the adopted children's register in respect of J.M.

(6) That the court does issue such other orders as may be necessary in the best interest of the child.

(7) That costs be in the cause.

Prayers 1 and 2 were granted by the court by orders made on 26th January 2012 and issued on 1st February 2012. This Ruling therefore concerns prayers 3 - 6 of the Originating Summons.

The Director of Children Services in the Ministry of Home Affairs was directed to conduct investigations as to the suitability of the applicants to adopt Baby J.W, and submit a Report on their findings to the court.

In his Report Ref. SC/1/35/36 (40) dated and filed in court on 20th February 2012 the Provincial Director Children Services recommended -

"the child has never known any other parent and Virginia is well placed to adopt the child. It is her best interest that V be accorded adoption orders to adopt J.M"

Under Kenya law the conditions precedent or prerequisites, to a domestic adoption as opposed to international adoption are set in Sections 156 - 159 inclusive of the Children Act 2001 (No. 8 of 2001). These are -

(1) the child must be at least six weeks old and has been declared free for adoption by a registered adoption society. It is unlawful and an offence not to follow this requirement (S. 157),

(2) any child resident within Kenya whether or not a child is a citizen of Kenya, or was not born in Kenya may be adopted (S.158),

(3) the child for adoption must have been under the continuous care and control of the applicant within the Republic of

Kenya for at least three consecutive months preceding the filing of the application for adoption (S. 157),

(4) Both the child and the applicant or applicants must be evaluated by a registered adoption society (proviso to S. 157), It is an offence to contravene these provisions which may render the offender to prosecution and imprisonment for a period of up to one year or fine not exceeding shs 20,000/= or both such imprisonment and such fine.

(5) an adoption applicant or applicants must have attained the age of twenty five years and at least twenty-one years older than the child, and not sixty-five years of age, or is a relative of the child or is the mother or father of the child (S. 158(1),

(6) under Section 158(2) the applicant for adoption orders must not be -

- (a) a sole male applicant in respect of a female child,
- (b) a sole female applicant in respect of a male child,
- (c) an applicant or applicants has or have not attained the age of sixty-five,
- (d) a sole foreign female applicant.

(7) an adoption order cannot be made to an applicant or applicants both or any of whom -

- (a) is not mentally sound within the meaning of the Mental Health Act,
- (b) a convicted felon, in respect of the offences against children specified under the Third Schedule to the Children Act. These are offences against morality,
- (c) is a homosexual,
- (d) in case of a joint application, the applicants are not married to each other,
- (e) a sole foreign male applicant.

(6) the consent of a parent or guardian of the child likely to contribute to the welfare of the child,

(7) unless dispensed with the consent of the mother or guardian of the child where the child is the mother of the child, (SS. 158(4) & 159),

(8) in the case of a child who has attained the age of fourteen years, with the consent of the child,

(9) appointment of a guardian ad litem (S. 160 & 164),

(10) the court must be satisfied that the order of adoption will be in the best interest of the child (S. 163(1),

(11) the court may impose conditions for adoption (S. 163(2).

I am satisfied that the applicant has fulfilled the condition precedent or pre-requisite to the adoption a guardian *ad litem* was appointed under the interim orders made on 26th January 2012, the child who was found abandoned in Nakuru Town and is now 10 years and 7 months, and is in class V in a private academy. The adoptive mother is at 62 qualified to adopt the child. It has been under the care and control of applicant, the only parent the child has known for the last seven years. The applicant is not within the class of those prohibited from adopting children.

The child was declared free for adoption by the Child Welfare Society of Kenya, (a registered adoption society) under its Certificate of Declaring a Child Free for Adoption issued on 6th June 2011. No consent is required as the child was abandoned.

Having reviewed the above conditions prerequisite for making an adoption order, I am satisfied that it is in the best interest of the child that adoption orders be made.

In exercise therefore of the discretion conferred upon this court by Section 163 of the Children Act 2001 (No. 8 of 2001), I grant the adoption orders stated in paragraphs 3, 4 and 5 of the Originating Summons dated 12th October 2011 and filed on 26th November 2011.

Cost in the cause.

There shall be orders accordingly.

Dated, signed and delivered at Nakuru this 8th day of June 2012

M. J. ANYARA EMUKULE
JUDGE