



REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAKURU Adoption Cause 10 of 2009

IN THE MATTER OF H.W alias R.Z.O (SUBJECT)

AND

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

R.K.O.....1<sup>ST</sup> APPLICANT

C.W.O.....2<sup>ND</sup> APPLICANT

**Adoption - requirements for valid adoption - a child be at least six weeks old; - has been declared free for adoption by a registered adoption society - the Children Act, 2001 (No. 8 of 2001) s. 156**

JUDGMENT

This judgment relates to an Originating Summons dated 9<sup>th</sup> November 2009 in which the Applicants herein sought the following orders -

- (1) that R.N of Post Office Box No. [particulars withheld] Nyahururu be appointed as the guardian ad litem of the subject herein during the hearing of these proceedings.
- (2) that Kenya Children's Home Adoption Society be authorized to investigate the applicant's fitness to adopt the subject and to file a report hereto.
- (3) that the consent of the Biological parents of baby H.W be and is hereby dispensed with since the child was abandoned soon after birth.
- (4) that the applicant be authorized/allowed to adopt the subject herein above known as H.W alias R.Z.O.
- (5) that the court do order that the subject's names hence fourth do read on all official documents as R.Z.O.

The first three orders were granted on 2<sup>nd</sup> February 2010 and are therefore spent. This judgment therefore relates to prayers 4 through to 5 of the Originating Summons.

The prerequisites for an adoption of a child are prescribed under **Section 156** of the **Children Act, 2001**, and are these -

- v the child be at least six weeks old,
- v the child be declared free for adoption by a Registered Society,
- v the child for adoption has been in continuous care and control of the applicant within the Republic of Kenya for a period of three consecutive months preceding the filing of the application,
- v both the child and the applicant or applicants as the case may be have been evaluated and assessed by a registered adoption society in Kenya,

- v *the adoption applicants must be of the age of at least twenty-one years older than the child but has not attained the age of sixty-five,*
- v *the applicant or applicants are not disqualified under Section 258(2) & (3) on any of the grounds prohibiting the making of adoption orders - either a sole male or female, sole foreign female, being of unsound mind, a convicted child molester or abuse or other Sexual Offences under ss. 146-151, 157-158, 162, 165-167 and assaults under 250-251 of the Penal Code (Cap. 63, Laws of Kenya),*
- v *Adoption orders will also not be made to any person who is a homosexual,*
- v *Consent of the person who is a parent or guardian of the child, except where a child has been abandoned or neglected or the parents or guardian have persistently failed to maintain or have persistently ill-treated the child.*

In this case, the 1<sup>st</sup> and 2<sup>nd</sup> Applicants (*the Applicants*) were at the time of filing the Originating Summons herein, aged, respectively, 41 and 37 years of age. The Applicants who have applied to jointly adopt the subject child are a married couple as per their Certificate of Marriage dated 26<sup>th</sup> September 1998.

The Applicants have both been assessed by the Kenya Children's Home, the Adoption Society which filed its Report on 11<sup>th</sup> December 2009, giving detailed information on the Applicants' background, including particulars of the Applicants individual backgrounds, identity and nationalities and the Applicants' families, the Applicants' education background and work experience, current residence, the Applicants' marriage history, property, motivation for adoption, information to the respective extended family towards the proposed adoption, the Applicants social life and religion, (*that they have no criminal record*), the Adoption Society's observation, and final recommendation that the applicants have proven ability to take care and provide parental responsibility to the minor H. W for the last 10 months they have been with her.

I have reviewed the Report as aforesaid by the Adoption Society. I have also noted the submissions by Miss Imali counsel for the Applicants that the child, the subject was abandoned in the Ngara area of Nairobi on 24<sup>th</sup> September 2007, following which Nairobi Principal Magistrate's Children Court Case No. 149 of 2008 was opened and an order was made on 5<sup>th</sup> September 2008 by the court.

I further note that as the subject was abandoned no consent from the biological parents or guardian would be required as prescribed by **Section 159(1)** of the **Children Act, 2001**. In addition the subject has been in the continuous care and stay with the applicants, not for the three consecutive months, as required under **Section 157(1)** of the **Children Act**, but over one year now.

I have noted finally that the Adoption Society through its case committee sitting on 11<sup>th</sup> September 2009 analyzed the case and satisfied itself that the Applicants in this cause meet all the requirements of adoption and granted the Applicants leave and permission to move the court to finalize the process of adoption.

Finally I have also considered for purposes of **Section 164** of the **Children Act**, (*which confers upon the court the power to appoint a guardian for the child (in the event of the death or incapacity of the adopter)*), reviewed the Affidavit of Fitness of the Proposed Guardian *ad litem* by R.N who has expressed his consent to the subject's guardian *ad litem*.

In my opinion therefore, the Applicants have fulfilled all the requirements under **Sections 156-160** of the **Children Act**. I am also satisfied in terms of **Section 163-164** of the **Children Act** that it is in the best interest of the child that the adoption order be made. The Originating Summons dated and filed on 9<sup>th</sup> November 2009 is therefore allowed in terms of prayers 3-5 inclusive. I further order for purposes of **Section 164** of the **Children Act** that R.N shall be the guardian *ad litem* of the subject.

**Dated, delivered and signed at Nakuru this 7<sup>th</sup> day of May 2010**

**M. J. ANYARA EMUKULE**

**JUDGE**