



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET

Adoption Cause 2 of 2006

IN THE MATTER OF RW

MDBM.....:.....APPLICANT

RULING

MDBM made an application seeking to be allowed to adopt RW a child who was born on 16th February 1999 to PMW and MNM, both a husband and wife. However MNM the mother of the child died on 20th March 1999 which was just over one month after the birth of the child. On 29th December 2000 MDBM (applicant) married PMW the father of the child. Though MDBM is a Kenyan she now resides and works in NORWAY. She stated that the father of the minor is sickly and she wants to travel with him and the child to Norway and hence the need for adoption orders. On 26th September, 2007 this court granted adoption orders to MDBM. However on 27th September DWW filed the present application seeking court to set aside the adoption orders given and the adoption application be heard inter parties.

In her supporting affidavit and submission by her counsel, the applicant stated that she is the mother of PMW the father of RW the subject of these adoption proceedings. The mother of the child passed on one month after the child was born and that she, the applicant, had stayed with the child in her custody since that time up to date. She stated that MDBM left for Norway in 2001 leaving the child and his father. She further deponed that PMW the father of the child is sickly and incapable of making a rational decision.

MDBM the respondent on her part swore affidavit and stated she had been taking care of the child all along and that the father, though sickly has given his consent for the adoption.

I have considered the application and the prevailing circumstances. I find that the applicant has brought to the fore serious issues which can only be addressed after a full hearing. She has stated that the child has been in her custody since birth. She is the grandmother and should have a say in the adoption issues. The mother of the child died one month after birth. Respondent married the father in December 2000 but it seems she left for Norway soon thereafter. There must have been a person taking care of the child all that time and the applicant claims to have done it. There is medical evidence showing the father is sickly. Infact there is medical report showing that he has been consulting a psychiatrist and is HIV positive. He is currently on medication for the psychiatric problem and on A.R.V.S. The issue of whether he could therefore have made a rational decision when giving his consent need to be addressed.

From the above therefore I find the application is well merited and the applicant DWW being the grandmother of the child has a right to be heard before final adoption orders are made. I therefore allow the application and set aside the adoption orders granted by the court and order that the adoption application be heard inter-parties.

Costs in the application.

Dated and Delivered on 22nd day of January, 2008.

KABURU BAUNI

JUDGE

DELIVERED IN THE PRESENCE OF:-

C/C - David

Kiboi for Arunga for Applicant

N/A - for Respondent