



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Adoption Cause 120 of 2005

IN THE MATTER OF EWM

CMM.APPLICANT

J U D G M E N T

This application for authority to adopt a child named EWM, was filed through an originating summons by the applicant CMM on 15.8.2005. It was amended on 13.2.2006. It came for a hearing before me on 9.11.2007.

The applicant, from the record, is a civil servant who then was a [Particulars Withheld], in the Kenya High Commission in Ottawa, Canada. She is now 55 years old and has her own adult children, one of them being the mother of the child applied to be adopted. That is to say, the applicant is the grandmother of the child by her second last daughter, now 31 years old, and apparently still pursuing her college education.

It is in the facts that the applicant has been and is responsible for her said daughter's education and all other upkeep. She accordingly has been living with and taking care of the child who is now 9 years old, from the whole beginning. She pays the young child's fees and fulfills her needs in addition to caring for the child's mother.

As a result of living together as aforesaid, the applicant developed a strong bonding with the child now intended to be adopted. Then there apparently came an understanding between the applicant and her daughter, the mother of the child that the applicant do apply to adopt the child who would be moving with and also living with the applicant wherever the applicant would, at any one time, be posted in her job, which this time was Canada. In short the mother of the young child surrendered her rights of care and attention and custody of the child to her mother, the applicant.

The mother of the child who is intended to be adopted is called EWM, and appeared before me. She confirmed she was about to join the University for high education. She was firm that she did not only depends on her mother in everything, inclusive college fees, but also stated that her child was born out of an extramarital relationship with a man who left Kenya for United States of America while she was pregnant. She further informed the court that the said natural father was not here when the child was born nor has he ever contacted her concerning the baby or any other purpose. In her view, the natural father of child ran away from her and the baby when he was wanted most and never showed any interest or concern for the baby. She firmly averred that as far as she was concerned, the baby was abandoned by her natural father and accordingly the said father should have no say over the child unless he shows up and gives account of his indecent conduct. The mother of the child accordingly was happy to let her own mother adopt the child so that the welfare and best interest of the child can be assured.

The applicant endorsed her daughter's views and stand above. It is not surprising therefore that the applicant's said daughter gave the required consent to facilitate and enable the adoption. The Guardian ad litem, one J WG, recommended the intended adoption in her report-dated 15.9.2005.

The Child Welfare Society which was involved in this case and which filed its report-dated 28.6.2007, confirmed the facts behind this application. They confirmed in particular, that the natural father of the child to be adopted was not interviewed by them because he was not available, because he allegedly was in America where he went for education over nine years ago. The society also confirmed that there was no evidence that the said person has ever contacted the natural mother of the child or any other person close to the child. The Society also confirmed that there was no evidence that the said putative father has ever sent any funds to maintain his child or do any positive act in favour of the child, to indicate that he was interested in the welfare of the child. Surprisingly however, the Child Welfare Society showed unwillingness to issue the certificate of freeing the child for adoption. The Society took the position that it could not free the child for adoption without knowing what the natural father might be thinking. Asking the society to declare whether the position it had taken was in the best interest of the child, its representative, the Executive Director, Esther Kihara inexplicably appeared noncommittal and left it to court to decide the issue.

The Director of Children's Services who also had investigated the case and filed a report-dated 19.12.2006 confirmed the facts

earlier stated in every detail. His position was more positive and more assertive in that he believed that the best interest lay in the child being adopted by the applicant who already has the physical custody. Nor did the fact that the applicant's husband had permanently separated from the applicant several years ago, deter the Director recommending the adoption.

This court has considered this case with great care although with great anxiety as well. It is commonly agreed that the child's father has not been found to know whether he would be willing to grant the consent for adoption. It is however, all round agreed, that he left Kenya over nine years ago when the child was still not born. He never contacted his girl friend, the mother of the child, over the child. His place of residence in America is unknown. He never sent any money to help the child. In the view of this court, his total lack of interest over the child, be it an attempt to know about the child's well being or what the child's needs are, amounts to practical abandonment. In the court's further view, his conduct is like a parent throwing a child where he knows the child might be in safe hands and disappearing for good, a conduct clearly amounting to abandonment.

Accordingly, the putative father's consent would and is hereby dispensed with by this court under the relevant provision of the Children's Act. The consent of the child's natural mother would be necessary and it has been given. The court has considered the best interest and finds that such interest is with the applicant who is not only a close relative of the child, but has indeed been taking every care of the child since the child was born. The bonding between the child and applicant was said to be excellent in that the applicant has always loved the child from the whole beginning while the child knew the applicant as her real mother.

Under these circumstances this court sees no obstacle in granting the authority to the applicant to adopt the child. Appropriate orders will be as follows: -

ORDERS

1. The applicant, CWM is hereby authorized to forthwith adopt baby EWM whose name henceforth shall be known as RWM.
2. The Registrar-General is hereby directed to enter this adoption in the Register of Adoptions.

Dated and delivered at Nairobi this 14th day of December 2007.

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D A ONYANCHA

JUDGE