



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

FAMILY DIVISION

ADOPTION CAUSE NO. 172 OF 2019

IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001 AND THE ADOPTION RULES

AND

IN THE MATTER OF ADOPTION OF BABY A (MINOR)

AND

IN THE MATTER OF AN APPLICATION OF ADOPTION BY F W K

JUDGMENT

1. Before this Court is the Originating Summons dated 10th December 2019 by which **FWK (the Applicant)** seeks the following orders:-

- “1. THAT the child be presumed to be a Kenyan citizen by birth.**
- 2. THAT the Director of Immigration be authorized to issue the child with a Kenyan Passport.**
- 3. THAT the Applicant FWK be authorized to adopt the child to be known as IWK.**
- 4. THAT RCK and CWK be appointed as the Legal Guardians of the child in the event of the death or incapacity of the Applicant before the child is of full age and fully self-reliant.**
- 5. THAT the Registrar-General do make an entry of this adoption in the Adopted Children's Register.**
- 6. THAT the Court be pleased to make any further orders it deems necessary.”**

2. The application was canvassed by way of oral evidence. The parties appeared before the Court via the online platform on **5th February 2021**. **PW1 FWK** was the Applicant. She told the Court that she has never been married and has no biological child of her own. The Applicant expressed her desire to adopt the subject child whom she has had in her custody since **July 2019**.

3. The Applicant told the Court that she is an employee of **Safaricom Limited** and has the financial means to care for the child. That her family is aware of and supports her intention to adopt. The Applicant stated that she fully understood the legal implications arising from an adoption order. She undertook to accord the child all the rights due to a biological child including the right to inherit.

4. **PW2 CMM** had been appointed as ‘Guardian ad Litem’ in this matter. She filed in Court her report dated **17th September 2020** recommending the adoption.

5. **PW3 GRACE EKAMBI** is an officer from **Little Angels Network** a Registered Adoption Agency. She filed in Court the Report of the Adoption Agency dated **12th June 2019** which Report recommended the adoption.

6. I have considered the evidence adduced in open Court as well as the various Affidavits and Reports filed in this matter. The Preliminary requirements for the making of an Adoption Order are set out in **Section 156(1)** of the **Children's Act** which provides as follows:-

“159(1) No arrangement shall be commenced for the adoption of a child unless the child is at least six (6) weeks old and has been declared free for adoption by a Registered Adoption Society in accordance with the Rules prescribed in that behalf.”

7. The subject-child was born on **27th October 2018**. She is now about **2¹/₂ years old** which is above the **six (6) week** age limit provided for by law. The **Little Angels Network** which is a Registered Adoption Agency have annexed to their report the original copy of their Certificate Serial No. **XXXXXX** dated **12th June 2019** declaring the child Free for Adoption. Accordingly I find that the legal prerequisites for an adoption order have been met in this case.

8. The duty of this Court is to analyze the material placed before it to determine whether the Applicant is a suitable adoptive parent for the subject-child. The Applicant is a Kenyan citizen as evidenced by the copy of her National Identity Card annexed to the Summons (Annexure **‘FWK-9’**). The Applicant has never been married and has no biological child of her own. She is a Christian and intends to raise the child in the Christian faith.

9. The Applicant is in stable employment. She works as a Support Analyst at **[particulars withheld PLC]**. Annexed to the Summons are copies of the Applicant’s payslips for **August, September and October 2019** (Annexure **‘FWK-10’**) and copies of her bank statements issued by **Standard Chartered Bank** (Annexure **‘FWK-13’**). Aside from her earnings from employment the Applicant also owns land in **Nanyuki** as evidenced by the copy of Title Deed (**page 50**) of the Summons. The Applicant’s financial documents indicate that she is financially secure and is well able to provide for the needs of the subject-child.

10. The Applicant was evaluated by a Doctor at the **Aga Khan University Hospital** and was found to be in good mental and physical health (see Annexure **‘FWK-11’**). The Applicant has also annexed a copy of a Clearance Certificate issued by the **National Police Service** proving that she has no criminal record. (Annexure **‘FWK-12’**).

11. The Applicant informed the Court that her family are aware of and are in support of her decision to adopt a child. That the family have embraced the child as one of their own. This is quite evident from the photographs annexed to the Summons (Annexure **‘FWK-14’**). The said photographs depict the Applicant, the child and family members. It is quite clear that the family have fully embraced the child in question. All in all I am satisfied and find that the Applicant is a suitable adoptive parent.

12. The subject child is a girl-child who was born on **27th October 2018**. On **30th October 2018** barely three (3) days after her birth the child was abandoned at **[particulars withheld] Catholic Church**. A good samaritan **ANNE NYAMBURA** rescued the child and reported the matter at **Huruma Police Station** vide **OB No. xx** of **30th October 2018**. Thereafter on **5th December 2018** the Nairobi Children’s Court committed the child to the **Nest Children’s Home** for care and protection. On **4th July 2019** the child was placed in the custody of the Applicant under a Foster Care Agreement.

13. Article 14 of the Constitution of Kenya, 2010 deals with the question of Citizenship. Article 14(4) provides as follows:-

“(4) A Child found in Kenya who is, or appears to be, less than eight years of age and whose nationality and parents are not known, is presumed to be a citizen by birth.”

The subject-child was found abandoned in **Huruma** aged only three (3) days old. Accordingly I declare the child to be a citizen of Kenya by birth.

14. The subject-child was abandoned by her biological mother at only **three (3) days** old. Efforts made by the Police to trace the parents/relatives of the child have borne no fruit. A Final Police Letter dated **11th June 2019** (Annexure **‘FWK-5’**) indicates that no person has come forward to claim the child. In the circumstances there is no known person from whom consent for this adoption can be sought and/or obtained. I therefore dispense with the requirement for consent in line with **Section 159(1)** of the Children’s Act.

15. In deciding upon any matter involving a child Courts are obliged to give priority to the best interests of the said child. **Section 4(2)** of the **Children Act** provides:-

“(2) In all actions concerning children, whether undertaken by public or private social welfare institutions, Courts of Law administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration.” [own emphasis]

16. The subject-child herein was abandoned shortly after birth. She faced an uncertain future being raised in Children’s Homes and institutions. This adoption allows the child the opportunity to be raised in a stable loving home environment. A home visit was conducted by the Children’s Officer. It was reported that the Applicant lives in her own home, which is an Apartment in **Syokimau** along **Katani Road**. It was a spacious three-bedroomed apartment in a secure neighbourhood and in a clean environment. The home was found to be conducive to the raising of a young child. The Applicant has also employed a Nanny to help her care for the child.

17. The Applicant has appointed Legal Guardians for the child. The said Legal Guardians who are a couple **RCK** and **CWK** have consented to act as Legal Guardians for the child. The signed letter of consent dated **3rd February 2019** is Annexure **‘FWK-15’** to the Summons.

18. The subject-child has been living with the Applicant since **July 2019**. Undoubtedly she has bonded with the Applicant. I was able to see the child online. She was very comfortable sitting in the lap of the Applicant. The child was neat and appeared healthy and well cared for. I have carefully perused the reports prepared by the **Guardian ad Litem**, the **Adoption Agency** and the **Director, Children’s Services**. All recommend the adoption without reservation. I am in agreement. I find that this adoption serves the best interest of the child. Accordingly I allow this application and I make the following orders:-

1. The Applicant **FWK** is authorized to adopt the child known as '**BABY A**'.
2. Upon adoption the child will be known as **IWK**.
3. The child is declared to be a Kenyan citizen by birth.
4. The Registrar General is directed to make the relevant entry in the Adopted Children's Register.
5. The Director of Immigration is authorized to issue the child with a Kenyan Passport.
6. **RCK** and **CWK** are hereby appointed as Legal Guardians for the child.
7. No orders on costs.

DATED IN NAIROBI THIS 12TH DAY OF MARCH, 2021.

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MAUREEN A. ODERO

JUDGE