



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
FAMILY DIVISION
ADOPTION CAUSE NO. E002 OF 2020
IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001 AND THE ADOPTION RULES
AND
IN THE MATTER OF ADOPTION OF BABY DG (THE CHILD)
AND
IN THE MATTER OF AN APPLICATION OF ADOPTION BY VWM
JUDGMENT

(1) Before this Court is the Originating Summons dated **30th June 2020** the Applicant seeks the following orders:-

- (i) **THAT** the Applicant VWM be authorized to adopt BABY DG.
- (ii) **THAT** upon adoption the child be known as CLWM.
- (iii) **THAT** the Registrar General be directed to enter the adoption into the Register of Adoptions.
- (iv) **THAT** the child shall be presumed to be a Kenyan citizen and be accorded all rights of immigration that accrue to Kenyan citizens.
- (v) **THAT** the Director of Immigration Services do issue the child BABY DG a Kenyan Passport upon application.”

(2) The Application was canvassed by way of viva voce evidence. The parties appeared before the Court on the online platform on **21st January 2021**. **PW1 VWM** who is the Applicant told the Court that she is currently a Masters Student at the **Mount Kenya University**. The Applicant told the Court that she got married to one **TR** a German National in the year **2012**. She stated that her husband currently lives in Germany but plans to re-locate to Kenya in the future. The couple have no biological child together hence the Applicants desire to adopt the subject-child.

(3) The Applicant told the Court that as a Christian she intends to raise the child in the Christian faith. She states that she is financially secure earning an income from Events Planning Business which she co-owns in Germany. The Applicant state that her husband has consented to her adopting a child. That her family are aware of and support her intention to adopt the child. The Applicant has appointed her younger sister as the Legal Guardian for the child.

(4) The Applicant confirms that she understands the legal implications of an Adoption order. She confirms that she will accord to the child all the rights due to a biological child including the right to inheritance.

(5) **PW2 EKK** was appointed as ‘Guardian ad Litem’ in this matter. He prepared and filed his report dated **9th December 2020** recommending the adoption.

(6) **PW3 WHITNEY MSINGO** is an officer from the **KKPI** Adoption Agency which facilitated the adoption. She produces the Report of the Adoption Agency dated **6th March 2019** which also recommends that the adoption be authorized.

(7) **PW4 MRS. ATATI** is a Principal Children's Officer. She produced the Report of the Department of Children's Services dated **6th November 2020** recommending that the Adoption be authorized.

ANALYSIS AND DETERMINATION

(8) 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.”

(9) The subject-child was born on **3rd August 2018**. She is now aged about **2¹/₂ years old** and is above the **six (6) week** age limit provided for in law. **KKPI** a Registered Adoption Agency have declared the child Free for Adoption vide their Certificate Serial **No. 682** dated **6th March 2019**.

(10) This Court has a duty to assess the suitability of the Applicant as an Adoptive parent. The Applicant is a Kenyan woman who is married to a German National. Annexed to the Summons (Annexure **'VWM 1'**) is a copy of the Applicant's Kenyan National Identity Card No. [...] and her Kenyan Passport. Also annexed to the Summons (Annexure **'VWM 3'**) is a Marriage Certificate Serial Number [...] indicating that the Applicant and her husband solemnized their union on **6th October 2012** at **[Particulars withheld]** in **Nairobi, Kenya**. Though she is married to a non-Kenyan the Applicant herself resides in Kenya where she is undertaking a Masters Course. She told the Court that her husband intends to relocate to Kenya. Since the Applicant herein is a Kenyan citizen who resides in Kenya I find that the Moratorium against Foreign Adoptions does not apply in this case.

(11) The Applicant told the Court that she is financially secure and is a co-owner of Events Management Business based in Germany. Annexed to the Summons (at **page 18**) is a letter written by the Applicant's husband confirming that she is a co-owner of the business known as **“[...]”** which business is registered in Germany.

(12) Both the Applicant and her husband have annexed copies of their Bank Statements as well as copies of the Statements for the business (Annexure **VSM '2'**) at pages **15-21** of the Summons. I am satisfied that the Applicant is financially stable and is in a position to provide for the needs of a growing child. The Applicant's husband has given his consent for the Adoption of the child vide his letter annexed as **VWM '4'**.

(13) The Applicant told the Court that she is a Christian and intends to raise the child in the Christian faith. A copy of the Applicant's medical report is annexed **VWM '9'** to the Report of the Adoption Agency. Upon evaluation the Applicant was found to be in sound mental and physical health.

(14) The Applicant's family are in support of her decision to adopt the child and the Report of the Guardian ad Litem indicates that the family have already embraced the child as a grandchild in the family. All in all I am satisfied that the Applicant is a suitable adoptive parent.

(15) The subject-child is a girl child known as **'Baby DG'** who was born on **3rd August 2018** to one **LNM**. The biological mother of the child opted to give up her baby for adoption as she was not in a position to care and provide for the child. This is because the mother had been rejected by her family on account of her pregnancy and she herself did not have the capacity to provide for the child on her own. The child's biological father was not traced.

(16) The said biological mother of the child wrote a letter dated **6th August 2018** (just **three (3) days** after delivering the child) to the Adoption Agency indicating her desire to give up the child for adoption. The mother also swore an Affidavit dated **16th November 2018** (Annexure **VWM '5'**) consenting to the adoption of the child and confirmed that she fully understood the permanent nature of an adoption order.

(17) Upon obtaining the necessary consents from the biological mother the child was admitted by the **Ruiru Children's Court** to the **House of Charity** on **6th August 2018** for Care and Protection on **14th November 2018** the biological mother signed the final consent giving her unequivocal consent to the adoption of the child. On **30th May 2019** the child was placed in the custody of the Applicant under a Foster Care Agreement.

(18) The Applicant has prayed that the child be presumed to be a citizen of Kenya. However in my view such declaration is not necessary as the child was born in the **Republic of Kenya** of a Kenyan mother. As such the child is a Kenyan citizen by birth.

(19) 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 interests of the child shall be a primary consideration.” [own emphasis]

(20) The subject child has been living with the Applicant in her home in **Thika** since **May 2019** since she was only **ten (10) months** old. The child has obviously bonded with the Applicant and her family. Both the Report of the Guardian ad Litem and the Children's Officer indicate that upon visiting the home, they noted that the child had been fully accepted and integrated into the family. The child was found to

be healthy and happy. This is quite evident from the photographs annexed to the Guardian ad Litem's report.

(21) A home visit revealed that the Applicant was residing with her family members in a large six (6) bedroomed house in **Thika**. Adequate provision had been made for the child. She had enough space and toys to play with. The home was found to be secure and conducive for raising a young child.

(22) The Applicant has appointed her sister **GNM** as the Legal Guardian for the child. The said **GNM** has by a letter (Annexure '**VWM '11'**') given her consent to act as Legal Guardian and to take up care of the child in the event the Applicant is unavailable or unable to care for her.

(23) This is a child whose biological mother was unwilling and/or unable to care for her. She has now found a home with the Applicant. In my view this adoption serves the best interests of the child. Accordingly I allow this application and make the following orders:-

- (1) The Applicant **VWM** is authorized to adopt **BABY DG**.
- (2) The child upon adoption will be known as **CLWM**.
- (3) The Registrar General is directed to make the relevant entry in the Adopted Children's Register.
- (4) The child is declared to be a Kenyan citizen by birth.
- (5) The Director of Immigration is directed to issue the child with a Kenyan Passport.
- (6) No orders on costs.

Dated in Nairobi this 5th day of March, 2021.

.....

MAUREEN A. ODERO

JUDGE