



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

ADOPTION CAUSE NO. 14 OF 2019

IN THE MATTER OF THE CHILDREN ACT, 2001

AND

IN THE MATTER OF THE ADOPTION OF BABY TF (MINOR)

MNN..... APPLICANT

JUDGMENT

1. The Applicant in this case is MNN, a female aged 52 years. She resides in her family's house at Thika and works as a nurse. Although she is currently single, the Children Officer's report indicates that she was previously married to an American, MG but the union was short-lived and ended in divorce. The social enquiry report however indicates that the Applicant had never married. However, both reports agree that due to medical complications, the Applicant has not been able to have biological children.
2. The Applicant adheres to the Christian faith. She owns some properties and as at 2019, had bank accounts with reasonable deposits. The Applicant seeks to adopt Baby TF.
3. Baby TF was found on 10/07/2018 by a Good Samaritan while abandoned in a bush at Mirera, Naivasha. The good Samaritan, one PO took the child to the nearby ASTU Police. The report was booked under OB no. [xxxx] of 10/07/2018 and the child taken to the Naivasha Sub-County Hospital. Upon discharge on 19/07/2018, the subject was admitted into Neema House Infant Rescue Centre. She was committed into the home under an Order made in Naivasha Care and Protection Case No. 442 of 2018 on 17th July, 2018. Efforts by police and Buckner Adoption Services to trace her parents proved futile and as at January, 2019, nobody had come forward to claim TF. On 28th January 2019 Buckner Adoption Services declare her free for adoption vide certificate No. 0343. On 4th February 2019, the subject minor was placed in the Applicant's care pursuant to a fostering agreement between the Applicant and Neema House Infant Rescue Centre. The minor has to date remained in the Applicant's care.
4. Pursuant to the orders made by this court on 27/02/2020, the guardian ad litem, MWK, and the Children Officer Thika Sub-County. Although the latter highlights some minor anomalies in the documentation presented in this cause, she noted that the subject has bonded well with the Applicant and her extended family with whom the Applicant shares the family house: the Applicant and a married brother who has a family of his own share a maisonette owned by their family. Although they have separate bedrooms and kitchens, the living and dining room are shared by both families.
5. The guardian ad litem also confirms in her report that the minor and Applicant are well bonded. The Applicant's motivation for adoption is to have a child of her own. Although the living arrangements may not be ideal, the Applicant and minor have their own part of the maisonette which they use as bedroom and kitchen and it appears that the two siblings sharing the mansionette have a cordial relationship and have embraced the subject as one of their own.
6. The Applicant is gainfully employed. She is mature and has demonstrated in advance her capacity to care for and provide for the subject minor. The subject minor's biological parent(s) abandoned her. She will certainly benefit from belonging in a family that loves and cares for her as opposed to institutional life. The Applicant may be a little advanced in years, but she is still within the legal age limit for adoption. She has nominated a younger sister as a legal guardian. The said sister, SWN has consented to the appointment although her letter is undated.
7. The court is obligated to uphold the best interests of the child in an application of this nature. See section 4(3) of the Children Act. The Applicant appears qualified for a local adoption and it appears that the subject minor is thriving in her care. The Applicant is capable of taking on parental responsibility over the subject and the proposed adoption serves the minors best interests.

8. In the circumstances, the court grants the originating summons dated 14th October, 2019 in terms of prayer 1, 2 and 3, but subject to the following conditions:

a. With regard to prayer (2), the prayer is granted subject to the condition that the legal guardian therein does within 21 days of this judgment file an appropriate letter of consent/commitment in respect of her appointment, failing which the order will lapse and the Applicant will be required to furnish a fresh prospective legal guardian for appointment by the court within 30 days of the lapsing of the appointment order in respect of SWN.

b. Secondly, due to the inconsistent statements concerning the Applicant's marital history, the court directs that the Applicant may not, without leave of this court, remove the subject minor outside the jurisdiction of this court for as long as the subject is below the age of 18 years.

c. Finally, in view of the Applicant's communal living arrangements identified in the Children Officer's report, (but not the guardian ad litem's report), the Applicant will be obligated to receive periodic visits from the Children Officer Thika Sub-County for a period of 5 (five) years in the event that the said accommodation arrangements subsist for such term.

d. A copy of this Judgment is to be served within 14 days of the date of delivery, upon the Children Officer Thika Sub-County by the Applicant, for her compliance with the visitation order.

Delivered and signed electronically on this 7th day of May 2021.

C. MEOLI

JUDGE

In the presence of:

For the Applicant: Miss Muhanda

Applicant : N/A

Kevin Ndege: Court Assistant