



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 148 OF 2019

IN THE ADOPTION OF

BABY PN.....THE CHILD

BY

VEOW.....1ST APPLICANT

AND

NWT.....2ND APPLICANT

JUDGMENT

1. VEOW and NWT have come to this court through an Originating Summons dated 24th November 2020 seeking an adoption order in respect of Baby PN. They are seeking 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 Applicants VEOW and NWT be authorized to adopt the child to be known as NOMW.
- (4) That ALWT and IMOW be appointed as legal guardians of the child in the event of the death or incapacity of the Applicants 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 this court be pleased to make any further orders it deems necessary.

2. The Applicants have prepared a Statement in support of the Originating Summons in which they state that they are Kenyan citizens and holders of National Identity Card Numbers [...] and [...] respectively (*the two identity cards are annexed*); that the 1st Applicant was born on 13th December 1973 and the 2nd Applicant was born on 21st January 1978; that they lived together for more than 13 years before they solemnized their marriage at the Registrar of Marriages on 27th February 2018 (*the marriage certificate is attached*); that they do not have a biological child; that the 1st Applicant is the owner and director of [particulars withheld] (*company ownership documents are attached*) and the 2nd Applicant works as a programme Assistant with the [particulars withheld] in Nairobi (*employment documents are attached*); that they have been examined and found to be physically and emotionally fit to parent the child (*copies of medical reports are attached*); that they have not been charged with or convicted of a criminal offence or of any offence referred to in the Third Schedule of the Children's Act, 2001 (*copies of certificates of good conduct from the National Police Service are attached*).

3. The Applicants further state that they have assumed financial responsibility for the child's medical care, education and general upkeep and are capable of meeting all the financial needs for the child. They have attached copies of logbook, statements of bank accounts and certificates of some land they own. They state they have the care and control of the child for a duration of more than three months and have attached a copy of foster care agreement. They state further that they live in a good and comfortable environment that is suitable for nurturing the child and ensuring his full development and that the child has bonded very well with them and extended family members.

4. The Applicants have appointed ALWT and IMOW as joint legal guardians of the child in the event of their death or incapacity before the child attains the age of majority or becomes self-reliant. They have attached copies of joint guardianship confirmation and national identity cards of the proposed legal guardians. They state that they have not been paid in consideration of the adoption and that they have not made

any previous applications in respect of the child.

5. The Applicants have also filed an Affidavit in support of the application for adoption.

6. The documents in the court file including the report from the Guardian Ad Litem NNR dated 11th November 2020 and the report from the Department of Children's Services dated 16th November 2020 show that Baby PN was born on 24th March 2018 at Kenyatta National Hospital to EA. He was abandoned by the mother who absconded from the ward on 10th April 2018. The matter was reported at Kenyatta National Hospital Police Post. It was recorded on Occurrence Book (OB) No.xx/xx/x/2018. The child was placed at Nest Children's Home for care and protection on 25th May 2018. He was committed to Nest Children's Home vide a court order on 20th June 2018 in Protection and Care Case No. 311 of 2018 at Milimani Children's Court. Investigations by the police failed to trace the mother of the child or relatives. The mother's aunts E and J were contacted by a social worker through telephone numbers but the two did not show interest in the child nor did they assist the police in tracing the mother.

7. The child was declared free for adoption by Little Angels Network vide Certificate of Declaring the Child Free for Adoption dated 31st January 2019 and Report to Declare a Child Free for Adoption of the same date.

8. The Applicants requested to take the child for foster care pending adoption proceedings on 15th February 2019. They have been married for more than 12 years without a child of their own. They say that they are motivated to give back to society by taking care of a child in need and have the financial and emotional capacity to take care of a child.

9. I have considered this matter. I have noted that on this court (Ongeri, J) appointed NNR on 20th February 2020 as Guardian Ad Litem. N has filed a detailed report. It shows that she has visited the home of the Applicants at [Particulars Withheld] Apartment along Ring Road Westlands. From her report the child is a happy child who loves playing and running around. He is an energetic child who has adapted well to his home environment and recognizes the Applicants as 'mama' and 'papa'. The report shows that the child has bonded well with the Applicants and extended family including grandparents.

10. I have confirmed all the attached documents showing that the Applicants are Kenyan citizens and that both are financially capable of giving the child a good home and upbringing. The 1st Applicant runs his own company [particulars withheld] Solutions and the 2nd Applicant works with the European Union. They own property as evidenced by the attached documents. Both have been cleared by the police of any criminal record and both are aged over forty (40) years meeting the legal requirement of the 20 years age difference required between an applicant and child.

11. The Applicants are married and before solemnizing their marriage on 27th February 2018 they had lived together for a long time. I have appreciated their desire to integrate both families in the life of the child by taking up the Applicants' respective fathers' names for the child as well as proposing the 1st Applicant's brother and 2nd Applicant's sister as legal guardians of the child.

12. I have seen the two letters by the police from Kenyatta National Hospital Police Post, dated 27th April 2018 and 11th October 2018, indicating that the police were not able to trace the mother of the child and that no one including the relatives of the child claimed the child. I have also noted that the reports of the Guardian Ad Litem and that from the Children's Services are in harmony in respect to the circumstances of the child and the applicants.

13. I am happy to note that in Applicants, Baby PN will get parents who will bring him up in a loving family and who are financially and emotionally ready to take up responsibilities of parenthood. I am satisfied with the documents attached to support this application. I can only conclude that the applicants desire to adopt the child is fuelled by the need to give the child best in life thereby furthering the paramount consideration in all matters concerning the child.

14. I am satisfied that the law has been complied with and that the best interest of the child as provided under Article 53 of the Constitution of Kenya 2010 and Part XII of the Children Act, 2001 has been given paramountcy in this matter.

15. Consequently, I hereby allow the Originating Summons dated 24th November 2020 and grant the following orders:

- (i) That the consent of the biological mother of the child is dispensed with.
- (ii) That the Applicants VEOW and NWT are hereby authorized to adopt Baby PN.
- (iii) That Baby PN shall be known as NOMW from this day forward.
- (iv) That Baby NOMW shall be presumed to be Kenyan citizen by birth with his date birth being 24th March 2018 and the place of birth being Kenyatta National Hospital, Nairobi.
- (v) That the Registrar General is directed to make an entry of this adoption in the Adopted Children Register.
- (vi) That the Director of Immigration is authorized to issue Baby NOMW with a Kenyan Passport.
- (vii) That AWT and IMOW are hereby appointed Legal Guardians of Baby NOMW.

(viii) That NNR is discharged from being Guardian Ad Litem of Baby PN. This court thanks her and the Department of Children Services for the work they have done to facilitate these adoption proceedings.

Orders shall issue accordingly.

DATED, SIGNED AND DELIVERED THROUGH VIRTUAL HEARING THIS 6TH MAY 2021.

S. N. MUTUKU

JUDGE