



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

ADOPTION CAUSE NO. E070 OF 2020

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

AND

IN THE MATTER OF BABY C

AND

IN THE MATTER OF AN APPLICATION FOR ADOPTION

BY

AWK.....APPLICANT

JUDGMENT

(1) Before this Court is the Originating Summons dated **28th October 2020** by which the Applicant **AWK** seeks the following orders:-

1. SPENT

2. SPENT

3. THAT the Applicant be authorized to adopt BABY C to be known as CKK.

4. THAT JNK be appointed the Legal Guardian of the child in the event of the death or incapacity of the Applicant before the child is of age.

5. THAT the child be presumed to be a Kenyan Citizen by birth and the date of birth to be 17th May 2015.

6. THAT the Registrar General be directed to enter the adoption in the Adopted Children Register.

7. THAT the Court be pleased to make any further orders it deems necessary.

(2) The Application was supported by the Statement of the Applicant dated **28th October 2020**. The Summons was canvassed by way of viva voce evidence on the online platform.

(3) The Applicant who testified as **PW1** told the Court that she is a Kenyan citizen working as a Social Worker with a local **NGO**. The Applicant got married in the year **2011** but separated from her husband in **2014**. She stated that her marriage was blessed with one (1) child a son born in the year **2011**. The Applicant now seeks to adopt the subject-child who is a boy-child aged **five (5) years**. The Applicant assured the Court that she understood the legal implications of an adoption order. She confirmed that she would accord to the child all rights due to a biological child including the right to inherit.

(4) **PW3 CWK** was the Guardian Ad Litem. She produced in Court her report recommending the adoption.

(5) **PW4 JM** represented the **KKPI** Adoption Agency. She produced the report of the Agency recommending the adoption.

(6) **PW5 EK** represented the **Director of Children Services**. He confirmed that the Director had filed in Court the Report dated **4th January 2021** recommending the adoption.

ANALYSIS AND DETERMINATION

(7) 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.”

(8) The subject-child is believed to have been born on or about **17th May 2015**. He is therefore now about **six (6) years** old above the six (6) week age limit provided for in the **Children Act**. **CHANGE TRUST** which is a **Registered Adoption Agency** have produced in Court their Certificate dated **1st November 2019** Serial Number **xxxx** declaring the child Free for Adoption. (Annexture **'AWK-5'**). In the circumstances I am satisfied that all the legal requirements for an Adoption order have been met.

(9) The duty of this Court is to assess the suitability of the Applicant as an adoptive parent. The Applicant is a Kenyan citizen as evidenced by the copy of her National Identity Card (Annexture **'AWK-13'**) to the Summons. The Applicant had earlier contracted a marriage with one **MITU TARATISIUS** on **29th April 2011**, as is evidenced by the copy of the Marriage Certificate Serial Number **xxxx** (Annexture **'AWK-8'**) annexed to the Summons. However the marriage later fell apart and the couple separated in the year **2014**. The Applicant informed the Court that Divorce proceedings instituted by her ex-husband are currently ongoing at the **Milimani Courts**. A copy of the Divorce Petition is marked as Annexture **'AWK-9'**.

(10) The Applicant told the Court that she has one biological child a son named **BMM** who was born on **9th June 2011**. His Certificate of Birth is Annexture **'AWK-10'**. The Applicant informed the Court that she wished to adopt a second child in order to expand her family and to provide a companion to her biological son. That she currently lives with her son and the subject child and is responsible for all their needs.

(11) The Applicant is a trained social worker who currently works for **CHANGE TRUST** which is an **NGO** for child protection and welfare. The Applicant has annexed to the Summons her employment letter dated **2nd November 2019** written by the Human Resource Manager at Change Trust confirming her position with them. (Annexture **'AWK-12'**). The Applicant earns approximately **Kshs. 90,000/-** per month which is quite sufficient to enable her provide for the needs of both children.

(12) The Applicant was examined and found to be in good mental and physical health. Her Medical Report is Annexture **'AWK-15'**. She has annexed a copy of a Police Clearance Certificate (Annexture **'AWK-16'**) indicating that she has no criminal record. The Applicant told the Court that her son and indeed her entire family support her decision to adopt the child. They have welcomed and embraced the child as one of their own. The Applicants sister **JNK** has consented to be the Legal Guardian for the child.

(13) On the basis of the material available I am satisfied that the Applicant is a suitable adoptive parent for the child.

(14) 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]

(15) The subject-child is believed to have been born on **17th May 2015**. He was found abandoned at the age of about **two (2) years old** within **Baba Dogo Estate** in **Nairobi**. The child was rescued by a Good Samaritan and the matter was reported at **Ruaraka Police Station** vide **OB Number xx** of **7th May 2017**.

(16) Thereafter the **Nairobi Children's Court** committed the child to **Happy Life Children's Home** for Care and Protection. On **24th November 2019** the child was released into the custody of the Applicant under a Foster Care Agreement. (Annexture **'AWK-6'**)

(17) **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.”

(18) The subject-child was found abandoned in **Nairobi**, within the **Republic of Kenya** aged about two (2) years. I therefore declare the child to be a Kenyan citizen by birth.

(19) Efforts made to trace the biological parents or other relatives of the child have not borne any fruit. To date no person has come forward to claim the child. The Final Police Letter dated **4th February 2020** written by the **Officer Commanding Ruaraka Police Station** confirms this fact. In the circumstances there exists no known person from whom consent for this adoption can be sought and/or obtained. Accordingly I waive the need for consent in line with **Section 159(1) (a)** of the **Children Act**.

(20) The subject-child herein was abandoned when he was barely a toddler. To date his parents / mother have not been traced. The child faced an uncertain future in Children's Homes and other similar institutions. This adoption allows the child the opportunity to be raised in a loving and secure home environment.

(21) I was able to interview the child online. He was articulate and was able to express himself clearly. The boy was neat and healthy. He was comfortable in the company of the Applicant. I have no doubt that the child has bonded well with the Applicant and her son.

(22) A home visit conducted by the Children's Officer revealed that the Applicant lives in a four-bedroomed house in **[particulars withheld]**. The child shares a room with the Applicant's other son. The house was found to be secure and well-furnished and was ideal for raising the two (2) children.

(23) The Applicant has appointed her sister **JNK** as legal Guardian for the child. The said **JNK** has signed the letter of consent to act as Legal Guardian dated **10th March 2019**.

(24) All in all I am satisfied that this adoption certainly serves the best interests of the child. As such I allow the Summons and make the following orders:-

(i) The Applicant AWK is authorized to adopt the child BABY C.

(ii) Upon adoption the child will be known as C KK.

(iii) The child is declared to be a Kenyan citizen by birth.

(iv) JNK is appointed as the Legal Guardian of the child in the event of the death or incapacity of the Applicant before the child comes of age.

(v) The Registrar-General is directed to make the relevant entry in the Adopted Children's Register.

DATED IN NAIROBI THIS 11TH DAY OF JUNE, 2021.

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MAUREEN A. ODERO

JUDGE