



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. E014 OF 2021 (OS)

AND

IN THE MATTER OF THE CHILDREN'S ACT (NO. 8 OF 2001)

AND

IN THE MATTER OF BABY BWK

AND

AN APPLICATION FOR ORDERS OF BWK ADOPTION OF BABY BWK BY

DWW

JUDGEMENT

1. By the Originating Summons dated 5.2.21, the Applicant DWW seeks to adopt a child known as Baby BWK. The Applicant is single and has own biological child, EM, aged 7 years. Following assessment by Kenya Children's Homes Adoption Society, the Applicant was found to have met all the requisite legal and social requirements. The case committee sitting on 9.12.20 did approve the Applicant as suitable and fit to adopt a female child.
2. Baby BWK who is estimated to have been born on 12.2.13, was born to ENK and DKG at Nakuru Nursing Home. The child lived with her mother until her demise on 28.3.16. The child was then taken in by the Applicant, immediately after the demise of her mother. She was then 3 three years old. The father of the child has never taken interest in the child since the death of the mother and readily gave his consent to the proposed adoption. DWK, the elder sister of the child is aware of this adoption process and she too gave her consent.
3. This Court did on 13.5.21 did appoint PNM as guardian *ad litem* for the child pending the hearing and determination of the adoption application, in accordance with Rule 8 of the Adoption Rules.
4. The Applicant has gone through the requisite assessments, and reports in respect thereof have been duly filed. The report by Kenya Children's Home Adoption Society which arranged the adoption of the child was duly filed in Court. In compliance with Section 156 of the Children Act, Kenya Children's Home Adoption Society by its certificate serial number xxxx declared the child free for adoption on 9.12.20. For the Director of Children Services, Nyaranga Odundo filed a report dated 28.6.21 which was countersigned by Hoyd Isadia, Deputy Director, Children Services. For her part, PWM the guardian ad litem, filed her report dated 15.6.21. All these reports are favourable and recommend the adoption of the child by the Applicant.
5. I note that the child has been in continuous care and control of the Applicant from 28.3.16 when her biological mother died. This is a period of over 5 years which is more than the statutory 3 months required under Section 157 of the Act. The Applicant is not younger than 25 years nor older than 65 years. She is more than 21 years older than the child. Section 158 of the Act has thus been complied with. The Applicant has been made aware of the consequences of an adoption order as well as the rights of an adopted child. She shall assume all parental rights and duties of the biological parents in respect of the child. I am satisfied that she fully understands that the adoption order is final and binding during the lifetime of the child and that the child shall have the right to inherit her property alongside the biological son of the Applicant. The Applicant cannot under any circumstances give up the child owing to any subsequent unforeseen behaviour or other changes in the child. The Applicant has demonstrated that she has the psychological and emotional capacity as well as the material resources to raise the child in a loving home environment. From observation at the hearing, the child appears to have bonded very well with the Applicant and seemed very well taken care of. The Applicant proposes to name the child BW.
6. After a careful assessment of the reports filed herein and from the observation of the interaction of the Applicant with the child during the hearing, this Court has formed the opinion that it will be in the best interest of the child to be adopted by the Applicant. The Applicant will

be able to provide a home and a family for the child to grow up in and thereafter become a useful member of the family and the society at large. The adoption order will also provide the Applicant's young son with a big sister. The Court notes that this is a kinship adoption as the Applicant is a biological cousin of the child; their mothers were sisters.

7. The Applicant has nominated her aunt, MNK to be the legal guardian of the child, in the event of the Applicants dying or becoming incapacitated before the child is of full age. The Court examined the proposed legal guardian and is satisfied as to her readiness, willingness and ability to be legal guardian of the child.

8. The Applicant seeks that the Director of Immigration be authorised to issue the child with a Kenyan passport. This is an order that cannot be made in these proceedings and the Court declines to grant the same. The Applicant is directed to make the requisite application to the Director of Immigration, for consideration.

9. Having taken into account the foregoing factors, this Court has formed the opinion that it would be in the best interests of the child that she be adopted by the Applicant. The Court is further satisfied that all the legal requirements for a local adoption have been met and makes the following Orders as prayed in the Originating Summons herein:

- a) The Applicant DWW, holder of national identity card number xxxx is hereby allowed to adopt Baby BWK, who shall henceforth be known as BW.
- b) I direct the Registrar General to enter this order in the Adoption Register.
- c) MNK is hereby appointed legal guardian of the child in the event that the Applicant dies or is otherwise incapacitated before the child attains the age of 18 years.
- d) PNM, the guardian *ad litem* is hereby discharged.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 2ND DAY OF JULY, 2021

M. THANDE

JUDGE

In the presence of: -

..... **for the Applicant**

..... **Court Assistant**