



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

ADOPTION CAUSE NO. 133 OF 2019

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

AND

IN THE MATTER OF BABY VBA

AND

IN THE MATTER OF AN APPLICATION FOR ADOPTION

BY

AGM..... APPLICANT

JUDGMENT

(1) Before this Court is the Originating Summons dated **8th October 2019** in which the Applicant **AGM** seeks the following orders:-

1. SPENT

2. SPENT

3. THAT the Applicant be authorized to adopt VBA a minor.

4. THAT the minor be known as VBA M and the same be marked on the Adoption Register.

(2) The Summons which was supported by the statement of the Applicant was canvassed by way of viva voce evidence on the online platform.

(3) **PW1 AGM** was the Applicant. He told the Court that he was a widower and that his wife was one **EAO** (now Deceased) the biological mother of the subject-child. The Applicant told the Court that he took the child into his home in the year **2008** when she was aged **one (1) year** old and has continued to care for and provide for her ever since. The Applicant now seeks to adopt the child in order to cement and formalize his relationship with her. He confirms that his own family as well as the family of her late wife are all agreeable for the adoption.

(4) **PW2 VBA** was the child in question. She told the Court that she recognizes the Applicant as her father having lived with him since she was aged **one (1) year**. The child expresses her willingness to be adopted by the Applicant.

(5) **PW3 EPHRAIM MUTERO** is an Officer from the **CHANGE TRUST** Adoption Society. He confirms that they have filed their report recommending the adoption.

(6) **PW4 WINFRED IKINYA** represented the **Director of Childrens Services**. She confirms the filing of their report dated **22nd July 2020** 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 was born on **14th August 2007** as evidenced by her Birth Certificate Serial Number [...] (Annexure **'VBA-1'** to the Originating Summons dated **8th October 2019**). Thus the subject-child is now aged about fourteen (14) years old well above the **six (6) week** age limit provided for in the **Children Act**.

(9) **CHANGE TRUST** which is a Registered Adoption Agency have annexed to the Summons the original copy of their Certificate Serial Number [...] dated **24th August 2019** declaring the child Free for Adoption. In the circumstances I find that all the legal prerequisites for an adoption order have been met.

(10) The duty of this Court is to examine the evidence before it to determine whether the Applicant is a suitable adoptive father. The Applicant is a Kenyan citizen as evidenced by the copy of his National Identity Card (Annexure **'VBA-3'**) as was the child's biological mother who is now Deceased. The Applicant told the Court that he met the child's mother **EAO** and commenced a relationship with her in the year **2007**. At the time the lady was pregnant with the subject child. It appears that the child's biological father parted ways with the mother when she fell pregnant and has played no role whatsoever in the life of the child. Indeed the court notes that in the child's Birth Certificate the Applicant **AGM** is named as her father.

(11) The Applicant told the Court that he married the child's biological mother under Luo Customary Laws on **15th September 2009**. That he took in the child at the age of **one (1) year** and has since that time raised her as his own child. The child's biological mother later unfortunately passed away in the year **2019** due to complications from child-birth. Her Death Certificate Serial Number [...] is annexed to the Summons (Annexure **'VBA-1(b)'**). The Deceased left behind a new-born baby boy who the Applicant told the Court is currently under the care of his mother-in-law (his wife's mother). Following the demise of her mother the Applicant has continued to live with and provide for all the needs of the child to date.

(12) The Applicant works as a Director at **[Particulars Withheld] Limited** and he has annexed to the Summons copies of his pay slip. (Annexure **'VBA-4'**) indicating an income of about **Kshs. 200,000/-**, which is sufficient to cater for the needs of the child. The Applicant owns his own home in the **Kasarani** area of **Nairobi County**.

(13) The Applicant is of good health as per a medical report from **Aga Khan Hospital** dated **16th August 2019**. (**Page 13 of Adoption Agency Report**). He has availed a recommendation letter dated **9th August 2019** written by one **Father IN** a Priest in **Gachie**. The Applicant has appointed the child's maternal grandmother **MNO** as the Legal Guardian for the child. The said Guardian has signed a consent letter dated **8th October 2019**. (Annexure **VBA – '15'**). All in all I am satisfied that the Applicant having raised this child literally from the time of her birth is suitable as an adoptive parent for said 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 the biological child of the Applicants late wife. Although the Applicant is **not** the biological father of the child he has lived with and provided for the child from the time she was born. The child's father has played no role at all in her life. A letter dated **12th July 2019** written by the Assistant Chief **Ruaka Location** confirms that the Applicant was recognized as the father of the child (Annexure **'VBA-6'**).

(16) **Section 76(3)(a)** of the **Children Act** which provides:-

“(3) Where the Court is considering whether or not to make an order with regard to a child, it shall have particular regard to the following matters-

(a) The ascertainable feelings and wishes of the child concerned with reference to the child's age and understanding.” [own emphasis]

(17) The Court was able to interview the child who at the age of **thirteen (3) years** was well able to express herself and to articulate her wishes. She referred to the Applicant as her father. The child stated that she understood that the Applicant wished to adopt her and become her **'real'** father. She expressed her willingness to be adopted by the Applicant.

(18) This is a child who has lost her mother. The Applicant is the only remaining parent she knows and recognizes. The various reports filed in Court indicate that the child enjoys a loving daughter-father relationship with the Applicant. The child's female cousin often stays in the home to provide company for the child.

(19) A home visit was conducted by the Children's Officer. The Applicant was found to be living in his own home. It is a spacious three bed-roomed house. The child occupies her own bed-room. The Applicant has enrolled the child at **C School** a nearby school where she has

friends and is thriving academically. The family are supportive of the Adoption and the Report of the Adoption Agency indicates that the child's maternal grand-mother has given the Applicant a piece of land in the rural home in **Kimilili, Bungoma County** where the child's mother was laid to rest.

(20) This is a kinship adoption. The child is already in a Family Unit. The adoption is merely to formalize her status. The child will remain in the same family environment and will be able to maintain close ties with her mother's family and with her baby brother. It is my view that this adoption certainly serves the best interest of the child. Accordingly I allow this Originating Summons and I make the following orders:-

- (i) The Applicant **AGM** is authorized to adopt the child **VBA**.
- (ii) Upon adoption the child shall be known as **VBAM**.
- (iii) The Registrar – General to make the relevant entry in the Adopted Children's Register.
- (iv) **MNO** is appointed as the Legal Guardian for the child.

DATED IN NAIROBI THIS 2ND DAY OF JULY, 2021.

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MAUREEN A. ODERO

JUDGE