



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

IN THE MATTER OF ADOPTION OF BABY S

ADOPTION CAUSE NO. 1 OF 2019

AWM.....APPLICANT

JUDGEMENT

1. The applicant 's Originating Summons dated 25th January 2019 brought under Article 14(4) of the Constitution of Kenya, Sections 158,159 and 160 of the Children Act, Section 24 of the Interpretation and General Provisions Act and Section 3A of the Civil Procedure Act seeks for orders of adoption of Baby "S" and also seeks to rename her PNW.

The applicant's Case

2. From the brief history on 19th June Baby S was abandoned at the border of Githurai 44 and 45. AW rescued Baby S and reported the incident at Kiamumbi Police Station in Ruaraka which was recorded vide OB No. xx/xx/x/xxxx. The baby was later placed at Happy Life Children's Home in Kasarani after which the Nairobi Children's Court issued a committal order of the minor in favour of Happy Life Children Home.

3. It was confirmed by Kiamumbi Police Station that as of 24th June 2011 no one had made a claim over the child. The adoption society, Kenyans for Kenyans Peace Initiative(KKPI)investigated into the background of the minor and declared the child to be free for adoption. The society's report and that of the Director of children has been filed recommending adoption of the Baby by the applicant who has had care and control of the minor since 5th July 2011. She states that she is a single lady earning a living as a teacher at [particulars withheld] School. She is in good physical and emotional health to be a parent to the minor.

4. The guardian CWM in her application dated 25th January 2019 swore that she has known the applicant for over twenty(20) years and she confirms that she is fit and deserving to be allowed to nurture the minor into adulthood. She was appointed guardian *ad litem* on 29/04/2019

Issues of determination

5. The only issue for determination herein is whether the applicant has satisfied the legal requirements under the Children's Act to be granted the orders for adoption of the Baby.

The law

6. 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:-

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 or adoption by a Registered Adoption Society in accordance with the Rules prescribed in that behalf.

7. In this cause, the minor abandoned a fact confirmed by the police at Kiamumbi Police Station vide a letter dated 24th June 2011 to Happy Life Children's Home. Similarly, a letter by District Children's Officer Kasarani to Happy Life Children's Home dated 10/8/2010 and a report by the said children's Officer to the Children's Court dated 8th March 2011 and the Adoption Society Report dated 26th February 2019, the abandonment of Baby S is reiterated and confirmed. Evidently, neither the police nor the institution to whom the committal for care and protection were given, have received a claim for the child. As such, legal abandonment may be presumed pursuant to Section 159(1)(a)(i) of the Children Act which provides:-

Abandonment may be presumed if the child appears to have been abandoned at birth or if the person or institution having care and possession of the child has neither seen nor heard from a parent or guardian of the child for a period of at least six months.

8. Having confirmed that the minor has been abandoned in law, the provision of consent is hereby dispensed with as required under Section 158(4)(a-f) of the Children Act.

9. From the documents filed in court by the applicant, she has demonstrated the financial capability to take care of the child; that her home environment is safe secure and satisfactory; that the child is relating well with her. There is no evidence that the applicant has received or agreed to receive any reward in consideration for the adoption.

10. Additionally, the applicant got married to one JKK on 21st August 2020. By the time the adoption process was already in progress. Mr. K fully supports the applicant in her adoption and has filed an Affidavit of Consent dated 22nd December 2020. The Department of Children's Services in its report states that Mr. K is supportive of the applicant in the adoption of the minor and he has attached an affidavit to that effect.

11. I have considered this cause and I am of the view that the applicant is suitable for adoption of the Baby and that it is in the best interests of the child be adopted by the applicant. The applicant has satisfied this court that she is capable of providing a conducive family environment for the health growth of the child. The applicant is obligated to treat the child as her own biological child and meet all parental obligations of such biological parent.

12. The applicant has been made aware that once an adoption order is made, it shall be final and binding during the lifetime of the child. Upon adoption, the child acquires the right of property inheritance from the applicant. She is also aware that she will not be able to give up the child owing to any subsequent behavior or other changes in the child.

13. Considering that the child was found abandoned and that her parents are unknown, I hereby dispense with the consent of such parents.

14. Having satisfied that the applicant has met the legal requirements for adoption, I hereby allow this cause and order as follows:-

- a) That the applicant is hereby allowed to adopt Baby S and to rename her Baby PNW.
- b) That the PWM is hereby declared the legal guardian of Baby PNW.
- c) That the Registrar-General is hereby directed to make the necessary entry in the Adoption of Children Register.
- d) That the guardian ad litem is hereby discharged.

15. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT NYERI THIS 14th DAY OF OCTOBER 2021.

F. MUCHEMI

JUDGE

JUDGEMENT DELIVERED THROUGH VIDEO LINK THIS 14TH DAY OF OCTOBER 2021