

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

ADOPTION CAUSE NO. 243 OF 2015 (OS)

IN THE MATTER OF THE CHILDREN ACT, 2001

AND

IN THE MATTER OF AN APPLICATION FOR AN ADOPTION OF BABY EMN

IN THE MATTER OF AN APPLICATION FOR ADOPTION BY

LWK.....APPLICANT

JUDGMENT

1. The applicant LWK is a single Kenyan woman aged 53 years. She is a civil servant currently employed with the [particulars withheld]. She has no children. She filed this originating summons dated 25th November 2020 seeking to adopt Baby ENM.

2. Baby ENM. was born on the 9th September 2009 at Naivasha District Hospital to a HIV positive street mother who abandoned her immediately after birth. The matter was reported to Naivasha Police Station vide O.B. No. xx/x/x/xxxx. Through the Naivasha District Children Officer, the baby was temporarily placed at Rehema PEFA Children's Home. She was formally committed to the Home by the Naivasha Children Court in **Protection and Care Case No. xxx of 2009**. Police efforts to trace the mother or relatives of the child were not successful. The freeing certificate has not been availed by the Applicant nor the Child Welfare Society. The Applicant has been with the child since the 11th January 2011 when the child was placed with her for foster care.

3. On the 15th July 2021, the court appointed MNK as the guardian *ad litem* and ordered her within 45 days to prepare and file the requisite reports after carrying out a social inquiry on the applicant to determine her suitability to adopt the child. On the 5th September, 2019, similar orders had been given to the Director of Children Services. The two reports were filed both recommending that the applicant be allowed to adopt the child, subject to the Child Welfare Society availing the freeing certificate for the child. The reports found that the applicant was socially, emotionally and financially stable and suitable to adopt the child. It was also found that the child and the applicant had bonded well.

4. **Section 156(1), of the Children Act** provides as follows:

“No arrangement shall be commenced for the adoption of a child unless the child is at least six weeks old and has been declared free for adoption by a registered adoption society in accordance with this rules prescribed in that behalf.”

5. It is evident that this child has not been freed for adoption, and no certificate in that regard has been filed. Ever if the court were asked to consider the best interests of the child under **section 4(2) and (3)** of the **Act**, the provisions of **section 156(1)** of the **Act** are in mandatory terms. The court has to ensure that the provisions of the **Act** are adhered to by an applicant seeking to adopt a child.

6. Given these circumstances, I refuse to allow the adoption. The Originating Summons is consequently dismissed.

DATED AND DELIVERED AT NAIROBI THIS 11TH DAY OF NOVEMBER 2021.

A.O. MUCHELULE

JUDGE