



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. E066 OF 2020

IN THE MATTER OF AN APPLICATION FOR ADOPTION OF BABY NWM

BY

CMK (APPLICANT)

JUDGMENT

1. The Applicant CMK is a Kenyan citizen. The Applicant is unmarried but has a fiancée, one JW, with whom he has sired two (2) children. He wishes, as a single applicant to adopt the child known as NWM, a minor of the female sex through the Originating Summons dated 22nd October, 2020.
2. From the pleadings, the court gathers that the Applicant is an Information Technologist at the [Particulars Withheld] Office in the United States of America (USA). He currently resides in USA and professes the Christian faith.
3. The child the subject of this matter is a niece to the Applicant having been borne of the Applicant's sister JMK and one BMM, hereinafter referred to as biological parents. A copy of the child's Certificate of Birth of serial number xxxx is on record. The relationship between the child's biological parents did not however culminate into a marriage and upon the birth of the child, the mother took full custody of her. Her father B moved on and is now married with a family of his own. The child's father is not involved in her life and it is the Applicant who has always provided for her upkeep.
4. Prior to the hearing of the adoption application, KKPI Adoption Society prepared and filed a report in court. They also issued a Certificate of Serial No. xxx dated 6th March, 2019 declaring the child free for adoption. The guardian ad litem WK filed a report dated 27th September, 2021 which was favorable and recommended the adoption of the child by the Applicants.
5. An officer from the Department of Children Services conducted home visits and established that the Applicant is financially and emotionally capable of providing for the up keep and education of the child. He filed a report dated 16th April, 2021. The report recommended the adoption for reasons the child stands to gain from the opportunities provided by becoming the daughter of the Applicant who is better able to provide for her.
6. The Children's Officer noted that this is a kinship adoption and the child's biological parents have consented to the adoption. Further that the adoption was in the best interest of the child and that the Applicant would provide her with better opportunities in the USA, which opportunities may not be available in the country.
7. The child is aged sixteen (16) years and is currently a form 3 student at St. [Particulars Withheld] Girls. She has consented to the adoption vide a consent dated 15th October, 2021 in which she states that she had given her consent without any coercion or duress, a copy of which is on record. At the hearing of the adoption application, she reiterated that she was desirous of being adopted by the Applicant.
8. The Applicant, being a single male Applicant, wishes to adopt a female child. **Section 158(2) of the Children Act No. 8 of 2001** is categorical that an adoption order shall not be made in favour of a sole male Applicant in respect of a female child unless the court is satisfied that there are special circumstances that justify the making of such an adoption order.
9. The Adoption Committee established under **section 155(1) of the Children Act** issued guidelines on 13th January, 2010 in regard to circumstances that the court will take into account in determining whether the set of facts put forward by the Applicant fulfills the criteria of special circumstances. In **re Adoption of EWN (Minor) [2019] eKLR**, Mwongo, J made reference to a letter of reference ODEN/62/N/ADS/VOL.1 (33) issued by the Ministry of Gender, Children and Social Developments Adoption Committee stipulating the "**Guidelines for Special Circumstances by the Adoption Committee.**"
10. Category III of the guidelines provides for the special circumstances in respect of a sole male applicant adopting a female child as follows:

i. Where the child is a relative.

ii. Where the applicant has other biological or adopted children over whom he is willingly exercising parental responsibility.

iii. Where the applicant is the legal guardian of the child or children appointed by will or in adoption proceedings and the parents die or become permanently incapacitated.

In the instant case, the child is a relative to the Applicant by virtue of being his niece. Additionally, the Applicant has biological children over whom he is willingly exercising parental responsibility.

11. Despite the fact that the Applicant currently resides in the USA, he is a Kenyan citizen and this therefore qualifies as a local adoption. This is however not only a local adoption but also a kinship adoption as the Applicant is a relative of the child.

12. It is important to note that the orders sought by the Applicant herein relate to a child. In law, in any matter concerning a child the best interests of a child are what is of paramount importance as provided for under **Article 53(2)** of the **Constitution** and **section 4(3)** of the **Children Act No. 8 of 2001**.

13. I have perused the entire record and find that the Applicant has fulfilled all the legal requirements relating to the adoption of the child. I am also satisfied that he meets the social parameters that are considered relevant to his taking on parental responsibility and custody of the child in this matter, on a permanent basis as would be conferred by the adoption order sought.

14. Additionally, the single Applicant was born on 20th June, 1967 and is therefore aged 54 years. He is therefore within the age bracket eligible to adopt, being an adult below the age of 65 as provided by **section 158(1)** of the **Children Act**.

15. The child's biological parents have both duly consented to the adoption of the child by the Applicant. Her father noted that he had moved on and was not present in the child's life while her mother stated that she is a single parent struggling to survive and that the child would have a chance at a better life if adopted by the Applicant. She noted that the child has always considered the Applicant as the father figure in her life and that the Applicant, her brother, loves the child as though she were his own. I observe that the child will not only gain a warm and loving home, she will also gain the added advantage of siblings.

16. The Applicant has appointed his fiancée Janet Wakaba to be the legal guardian of the child. She has consented to be appointed as such through an affidavit duly sworn by herself on 18th August, 2020.

17. In view of the foregoing, I allow the prayers sought in the Originating Summons dated 22nd October, 2020 and order as follows:

i. The Applicant, CMK is hereby allowed to adopt **Baby NWM**. Upon adoption she shall be known as **NWM**.

ii. Her date of birth is 3rd January, 2005. She was born in Kenya, and the place of birth is Nairobi.

iii. JW is hereby appointed legal guardian of the child in the event that the Applicant dies, or is incapacitated by ill-health.

iv. The Registrar General is directed to enter this Order in the Adoption Register.

v. The Director of Immigration is hereby authorized to issue the child with a Kenyan passport.

vi. The guardian ad litem is hereby discharged.

It is so ordered.

DATED SIGNED AND DELIVERED IN VIRTUAL COURT THIS 8TH DAY OF NOVEMBER, 2021.

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L. A. ACHODE

HIGH COURT JUDGE