



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

ADOPTION CAUSE NO. 98 OF 2018

IN THE ADOPTION OF

BABY LW.....THE CHILD

AND

NO.....1ST APPLICANT

ECAMW.....2ND APPLICANT

JUDGMENT

1. Before this Court is the Originating Summons dated 2nd July 2018 by which the Applicants herein seek the following orders:-

- “1. THAT the child be presumed to be a Kenyan Citizen by birth.
- 2. THAT the Director of Immigration be authorized to issue the child with a Kenyan Passport.
- 3. THAT the Applicants NO and ECAMW be authorized to adopt the child to be known as AIO.
- 4. THAT SOO be appointed as the legal Guardian of the child in the event of the death or incapacity of the Applicant before the child is of full age and fully self-reliant.
- 5. THAT the Registrar General do make an entry of this adoption in the Adopted Children Register.
- 6. THAT the court be pleased to make any further orders it deem necessary.”

2. The summons was supported by the statement of the 2nd Applicants and was canvassed by way of oral evidenced on the online platform.

3. The Applicants NO and ECAMW are a married couple. They have one biological child, a son who is now aged **nine (9)** years. The Applicants now seek to adopt the Subject child who is a girl in order to expand their family.

ANALYSIS AND DETERMINATION

4. I have considered the summons before this court as well as all the material filed in support of the same.

5. The prerequisites for an adoption order are set out in **section 156(1) of the Children’s Act 2001** which provides as follows: -

“159(1) No arrangement shall be commenced for the adoption of a child unless the child is at least (6) weeks old and has been declared free for adoption by a Registered Adoption Society in accordance with the Rules prescribed in that behalf.”

6. The Subject child was born on 28th September 2016 as evidenced by the copy of her Birth Certificate Serial No. xxxxxx which is annexed to the summons (Annexture ‘EL-1’). The child is therefore now aged 5½ years well above age limit provided for in law.

7. A Kenya Children's Home Adoption Society have annexed to their report a Certificate Serial No. **xxxx** dated **20th September 2017** declaring the child Free for Adoption. Accordingly, I am satisfied that the prerequisites for an adoption order have been met.

8. The duty of this court is to analyze the evidence as well the material presented before it to determine whether the Applicants are suitable adoptive parents. The Applicants are both Kenyan Citizens and have annexed copies of their National Identity Cards as proof (Annexure '**EL-11**').

9. As stated earlier the Applicants are a couple who first underwent a customary marriage in the **year 2010**. They later solemnized their union at the **Registrar's Office** on **31st January 2017**. Annexed to the summons a copy of their Marriage Certificate Serial No. **xxxxx** (Annexure '**EL-12**').

10. The Applicants have one biological child a son who was born on **1st August 2012**. (Annexure '**EL-13**') is a copy of the said Childs Birth Certificate Serial No. **xxxxxx**. They told the court that they desire to adopt a child in order to expand their family. They are also motivated by the desire to provide a needy child with a home.

11. The Applicants are both Christians and intend to raise the minor in the Christian Faith. They are both congregants at the **[Particulars Withheld] Catholic Church in Langata**.

12. The Applicants are both employed. The **1st** Applicant is a logistics Coordinator with the **[Particulars Withheld]**. Annexure '**EL-14**' is a letter dated **3rd April 2018** written by the Managing Director of the Foundation confirming that he is their employee. The **1st** Applicant has also annexed a copy of his pay slip (Annexure '**EL-15**').

13. The **2nd** Applicant is a registered **Clinical Officer**. The couple have annexed copies of their Bank Statements from **Co-operative Bank of Kenya**. They earn a joint monthly income of about **Kshs 150,000** which is sufficient to provide for the needs of their children. All in all I am satisfied that the Applicants are financially secure and are in a position to provide for the Subject child.

14. Both Applicants were examined by a doctor and both were found to be physically and mentally fit. Copies of their medical reports are annexed (**'EL-16'**). They have both annexed copies of clearance Certificates issued by the **Kenya Police Service** proving that neither has a criminal record (Annexure '**EL-17**').

15. The Applicants told the court that they have informed their family members of their intention to adopt. That the family are supportive and have embraced the child as one of their own. This is evident from the bundle of photographs annexed to the summons (Annexure '**EL-19**') which photographs depict the child with extended family members.

16. The Applicants have appointed as Legal Guardian for the child **SOO** who is a sister to the **1st** Applicant. The said legal Guardian has signed the confirmation dated **4th June 2017** confirming her willingness to take up parental responsibility for the child in the event of the incapacitation of both Applicants (Annexure '**EL-20**').

17. Based on the material available I am satisfied that the Applicants are indeed suitable adoptive parents.

18. The Subject child is a girl child who was born at the **[Particulars Withheld] Health Centre** on **28th September 2016**. The child was of low weight at birth and was referred to **Thika Level 5 Hospital** where she was placed in the new born unit. The Childs mother who gave her name as **LW** abandoned the child at the hospital. The matter was reported at **Thika Police station vide OB Number xx of 6th December 2012**. Thereafter the **Thika Children's Court** committed the child to **Macheo Children Home** for Care and Protection. On **11th October 2017** the child was placed into the custody of the Applicants under a **Foster Care Agreement**.

19. It was reported that after abandoning the child, the Biological mother never returned to the hospital to reclaim her child. Efforts to trace the mother through the contacts she provided to the hospital were futile as the telephone number provided was permanently switched off.

20. Police efforts to trace the biological mother and/or relatives of the minor has borne no fruit. No person has come forward to claim the child. A final police letter dated **21st July 2017** was issued by **Thika Police Station** (Annexure '**EL-7**').

21. Given the fact of abandonment there exists no known person from whom consent for this adoption can be sought and obtained. In the circumstances, I waive the requirement for consent in line with **Section 159 (1)(a)** of the **Children Act**.

“**Article 14** of the **Constitution of Kenya, 2010** deals with the question of Citizenship. **Article 14(4)** provides as follows: -

“(4) **A child found in Kenya who is, or appears to be, less than eight years of age, and whose nationality and parents are not known, is presumed to be a citizen by birth.**”

22. The minor was born in this Country and was abandoned at birth at **Thika Level 5 Hospital** within the **Republic of Kenya**. I do declare that the child is a Kenyan Citizen by birth.

23. In deciding upon any matter involving a child, Courts are obliged to give priority to the best interest of the said child. **Section 4(2)** of the **Children Act 2001** 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)

24. This is a child who was abandoned shortly after her birth. She faced an uncertain future in **Childrens Homes** and other similar institutions. This adoption allows the child the opportunity to be raised in a loving and stable home environment.

25. A home visit conducted by the **Childrens Offices** found that the Applicants live in a three bed-roomed house at the **[Particulars Withheld] Estate in Langata**. There was ample room for the child. The home was in a secure gated community with a perimeter fence and a gate which is manned on a **24 hour** basis. The Applicants have also employed a nanny to assist in caring for the Children.

26. I have perused the reports prepared by the **Adoption Agency**, the **Guardian Ad Litem** and the **Director Childrens Services**. All three reports were positive and all recommended the adoption.

27. I was able to see the child online. She was a healthy and cheerful toddler who was able to answer basic questions about herself. The child was very comfortable sitting between the Applicants. I note that the minor has lived with the Applicants in their home since October 2017, a period of **four (4) years**. She has obviously bonded with the Applicants and views them as her parents.

28. Finally, I find that this adoption does serve the best interests of the child. In the circumstances, I allow this application and I make the following orders:-

- (1) **The Applicants NO and ECAMW are authorized to adopt the child known as ‘Baby LW’.**
- (2) **Upon adoption the child will be known as AIO.**
- (3) **The child is declared to be a Kenyan citizen by birth is entitled to all the rights and benefits under the Constitution of Kenya and all applicable laws.**
- (4) **The Registrar General is directed to make the relevant entry in the Adopted Childrens Register.**
- (5) **SOO is appointed as the legal Guardian of the child.**

DATED IN NAIROBI THIS 3RD DAY OF DECEMBER 2021.

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MAUREEN A. ODERO

JUDGE