



REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAIVASHA

(CORAM: R. MWONGO, J)

ADOPTION CAUSE NO. 4 OF 2019

IN THE MATTER OF AN APPLICATION FOR AN ADOPTION ORDER FOR

LG (aka GJW)MINOR

BY

MWN.....APPLICANT

JUDGMENT

Background

1. By an application by way of originating summons filed on 30th September, 2019, the applicant seeks to be authorized to adopt the minor child LG also known as GJW.
2. The application is made under **Articles 14(4) and 53(2)** of the Constitution and **Sections 157 and 160** of the **Children's Act No 8, 2001**. Article 14 (4) relates to children found in Kenya who appear to be less than eight years old and whose nationality and parents are not known. Article 53(2) requires that the court treat as paramount, the child's best interests in any matter concerning the child.
3. The applicant avers, through her affidavit, that she is an adult Kenyan national, unmarried, and working as a field officer in Nakuru County. She has no children of her own, and according to an attached medical report from AIC Kijabe Hospital dated 15th May, 2017, she is unable to have children due to total abdominal hysterectomy. She also attached copies of her Identity card, bank statements, payslip, and a copy of title deed in proof of her identity and means.
4. From documents exhibited by the applicant, the minor was found abandoned within Karugia-mtoho area by a good samaritan Joyce Wambui who rescued the child and reported to Saba Saba Police station on 2/5/2018. The Occurrence Book details (OB Number 17/01/05/2018) for the report were attached to the application. She was advised to keep the baby overnight and the following day the baby was referred to Muranga South Sub-County Children's Officer. The Children's Officer requested New Life Home Trust to rescue the baby and await committal orders. The child was estimated to be about two weeks old at the time of abandonment. An admission Form dated 2nd May, 2018, for the child was exhibited and LG was assigned Admission Number 332/18.
5. At the instance of the Muranga Sub-County Children Officer, and by an order of Kigumo Children's Court dated 8th May, 2018, LG was committed to the care and protection of New Life Home Trust, until further orders. The committal order was attached.
6. Following a hearing on 18th November, 2019, under certificate of urgency, attended by the applicant, the proposed guardian ad litem, Milka Gathoni and the subject Child, this Court made the following orders, inter alia:
 - a. That MGM ID No xxxxxxxx be appointed a Guardian ad litem of the minor during the hearing of these adoption proceedings;
 - b. That the Director of Children's Services, Ministry of Gender, Children and Social Development be directed to conduct investigations as to the suitability of the applicant to adopt the minor and submit a report of his findings to this court

Confirmation of abandonment

7. In a final report dated 18th December, 2018, from Saba Saba Police Station to New Life Home Trust which refers to the aforesaid

abandonment report and the OB Number it is stated:

“This therefore is to confirm that for the last six months no relatives or biological parents have come forward to this station to claim the child”

8. Similarly, by a letter reference CS/1/6d from the Department of Childrens Services, Kandara Sub-County, dated 18th December, 2018, the Children Officer stated as follows concerning the abandoned child:

“This therefore is to confirm that for the last six months no relatives or biological parents have come forward to this station to claim the child”

9. Thus, neither the police nor the institution to whom a report or committal for care and protection were given, have received a claim for the child. Accordingly, legal abandonment may thus be presumed in terms of the proviso to **Section 159(1)(a)(i)** of the **Children Act**, which provides as follows:

“(i) 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”

10. This court confirms, finds and holds that the child, LG, was and is deemed to be abandoned in law. As such the court hereby dispenses with the provision for consent for adoption by a parent or guardian or any other person, required under section 158(4)(a-f) of the Children Act.

Whether an Adoption Order can be made

11. This court has power pursuant to section 154 of the Children Act, to make an adoption Order. However, for adoption to take place:

- a child must be at least six weeks old and free for adoption;
- the child concerned must have been in the continuous care and control of the applicant within Kenya for a period of three consecutive months preceding the filing of the application; and
- that both the child and the applicant have been evaluated and assessed by a registered adoption society in Kenya.

12. The above requirements are provided for in Section 156-157 of the Children Act which contains the prerequisites for adoption and as to children who can be adopted. The sections provide as follows:

“156. (1) 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.

(2) It shall not be lawful for any person whether being a parent or guardian of a child or otherwise, or for an adoption society by whom arrangements for adoption of a child are made, to place a child into the care and possession or control of a person who proposes to adopt him, if an adoption order in respect of the child cannot be lawfully made in favour of that person.

(3) Any person who contravenes the provisions of this section shall be guilty of an offence and liable to imprisonment for a term not exceeding six months or to a fine not exceeding ten thousand shillings or to both.

157. (1) Any child who is resident within Kenya may be adopted whether or not the child is a Kenyan citizen, or was or was not born in Kenya: Provided that no application for an adoption order, shall be made in respect of a child unless the child concerned has been in the continuous care and control of the applicant within the Republic for a period of three consecutive months preceding the filing of the application and both the child and the applicant or applicants, as the case may be evaluated and assessed by a registered adoption society in Kenya.

(2) Any person who contravenes the provision of subsection (1) of this section shall be guilty of an offence and liable to imprisonment for a term not exceeding one year or to a fine not exceeding twenty thousand shillings or to both such imprisonment and such fine.”

13. By a letter dated 23rd December, 2019 to this Court, the Department of Children’s Services issued a report requested by the Court on its investigations as to the suitability of the applicant to adopt the minor. The four page report, reference CCC/NKR/1/23/VOL.IX/(075), provides information about the applicant, her background, education, motivation and expectations, and about the child. It details the social support to guardianship noting that the applicant has in place a legal guardian, namely MW. The guardian has filed an affidavit and consent, both dated 30th September, 2019, to act as such.

14. Further, the report also shows that the applicant’s father was interviewed and he indicated that the applicant had taken the child to his home and he had given his support and blessing to her; that she has the financial ability to take care of the child; that her home environment is safe secure and satisfactory; that the applicant has asserted that the child will have inheritance rights and that the child is relating well with the applicant.

15. Finally, the report notes that the child has been declared free for adoption by the Change Trust Adoption Services vide Certificate No [xxxx] dated 21/12/2018. The Change Trust Certificate of Adoption and Report to Declared Child Free for Adoption are both annexed to the application.

16. The Children's Department Report concludes with a recommendation as follows:

“The child has bonded well with the applicant at the home. Matching was successful and there is acceptance in the family and in the neighbourhood. She is well provided for and there is a bright future for the child. The applicant is determined to make the child happy and ready to sacrifice even more for her. It is therefore in his (sic) best interests that the prospective adoptive parent adopts her.”

17. I am of the view that the applicant has complied with all the requirements of the law for purposes of adoption and that it is in the best interests of the child that the applicant be permitted to adopt the child.

Disposition

18. The Court is satisfied that the provisions of Part XII of the Children Act on adoption have been complied with. In exercise of the powers of the court under section 163 prior to making an adoption order, the court notes:

- a. The relevant consents were dispensed with under section 159 of the Act this being an abandonment case in respect of a baby abandoned at two weeks after birth;
- b. That the best interests of the child have been taken into account, it being noted that the child is not able to indicate her wishes, but that applicant has the ability to educate and take care of the child;
- c. That the applicant has not received or agreed to receive any reward in consideration for the adoption;
- d. That there is no one whose consent can be lawfully received, and no one is capable of so doing;
- e. That the applicant is not a relative of the child, and no relatives of the abandoned child have ever come forward;
- f. That both the applicant and the child have been assessed and evaluated by Change Trust, a registered adoption society in Kenya, and the evaluation report and supporting documents availed to the court.

19. This court is satisfied that in the present case, this is an abandonment adoption, and is also a local or domestic adoption. The court is also satisfied that the applicant is a suitable person with the demonstrated financial and social means to provide and care for the Child, and has been doing so for a considerable period prior to making this application. It is also noted that the applicant and the Minor have a sound relationship and bond well.

20. For all the above reasons, I allow the prayers sought in the Originating Summons and hereby order as follows:

- a. The Applicant MWN is hereby authorized to adopt the Minor LG aka GJW.
- b. That the child be and is hereby presumed to be a Kenyan citizen having been found abandoned in Kenya approximately two weeks after birth.
- c. That the Registrar General is hereby directed to enter this Order in the Adoption Register for adopted children.
- d. The Registrar of Births and
- e. That MWN is hereby appointed as the legal guardian of the child herein
- f. The Guardian ad litem is hereby discharged
- g. Costs of this application to be borne by the applicant.

Administrative directions

21. Due to the current inhibitions on movement nationally, and in keeping with social distancing requirements decreed by the state due to the Corona-virus pandemic, this Judgment has been rendered through Teams/Zoom video/tele-conference with the consent of the parties noted hereunder, who were also able to participate in the conference. Accordingly, a signed copy of this judgment shall be scanned and availed to the parties and relevant authorities as evidence of the delivery thereof, with the High Court seal duly affixed thereon by the Executive Officer, Naivasha.

22. A printout of the parties' written consent to the delivery of this judgment shall be retained as part of the record of the Court.

23. Orders accordingly.

Dated and Delivered via Teams Video-conference from Nairobi This 21st Day of May, 2020

Delivered in the presence of:

1. Mrs Gathecha for the Applicant
2. Court Clerk - Quinter Ogutu