

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

(FAMILY DIVISION)

ADOPTION CAUSE NO. 42 OF 2019

IN THE MATTER OF AN APPLICATION BY NNW FOR ADOPTION OF BABY BZW

RULING

1. Before me is an Originating Summons dated 3rd March 2019 for the adoption of BABY BZW by NNW, filed under **Section 157 and 160** of the **Children Act 2001**, as well as **Legal Notice No. 75 of 2002**.

2. The child was born on 5th December 2014 and the mother ENW is deceased. The applicant is an aunt of the child, being a sister of the father KMW.

3. In determining this matter, I have seen and perused and considered the report from the Director of Children Services dated 26th August 2019 which concludes that the adoption is in the best interests of the child. It is also stated in the report that though the applicant currently resides and works in the United States of America, the proposed adoption is a local adoption, as the applicant is a Kenya citizen as well as a citizen of the United States of America, where she is married and currently works. I have also seen and perused and considered the report of the guardian ad litem BAO which recommends the adoption positively.

4. Though the applicant currently resides and works in the United States of America, this is not an international adoption as it does not fall within the definition of international adoptions under **Section 162** of the **Children's Act** as the applicant has dual citizenship that is she is a Kenya Citizen and a citizen of the United States of America. In addition, there is no suggestion that the child will move permanently from Kenya to the United States of America. I thus hold that this is a local adoption.

5. This is an adoption of a male child by a female applicant. In this regard **Section 158(2)(b)** of the **Children Act** provides as follows –

“158(2) An adoption order shall not be made in favour of the following persons unless the court is satisfied that there are special circumstances that justify the making of an adoption order –

(b) a sole female applicant in respect of a male child.”

6. Having considered the facts and circumstances of this matter where the child is being adopted by a close relative, that is an aunt who is a sister of the father, and that the applicant is married and has a family, that the biological mother of the child is deceased, and that the biological father of the child KMW has a problem of drunkenness, in my view the adoption herein is in the best interests of the child as it will enable the child get the needed parental support and guidance that is very important in his upbringing and growth to a responsible adult.

7. I thus find merits in the Originating Summons, and allow the same and order as follows –

1. That the applicant NNW be and is hereby authorized to adopt **BABY BZW** and the child be called **BZW** henceforth.

2. That the Registrar General do make appropriate entries in the Adopted Children's Register in respect of **BZW**.

3. That **SLW of [Particulars Withheld]** be and is hereby appointed as **legal guardian** of BZW in the event of death or incapacity of the applicant.

DATED and delivered at Nairobi this 14th day of July, 2020.

George Dulu

JUDGE

Due to the COVID-19 pandemic and the Government regulations made by the Minister for Health, this ruling has been transmitted to parties/counsel through email addresses given: orongaadvocates@gmail.com