

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KIAMBU

ADOPTION CAUSE NO 26 OF 2018

IN THE MATTER OF ADOPTION OF BABY VN

MWM.....APPLICANT

JUDGMENT

1. Baby VN alias VW the male subject of the present application is presumed to have been born on 24/7/16. He was rescued on 24/7/16 by good Samaritans from a pit latrine where he had been dumped. He was admitted for several weeks at the Kerugoya County Referral Hospital. The incident was reported to Wanguru Police Station *vide* O.B No. [xxxx]. Upon stabilizing, the subject was admitted to New Life Home Trust Satellite Home, Nyeri on 14/10/16. He remained in the home as efforts were made to trace his mother. The Children Court at Kerugoya formally committed the subject minor to the New Life Trust Home in Care and Protection Case No. 13 of 2016. Efforts to trace his parents bore no fruit and Buckner Kenya Adoption Services declared him free for adoption on 14th July 2017 *vide* certificate No. [xxxx]. Subsequently, in March 2018 he was released to the Applicant MWM under a care agreement and has thus remained to date.

2. The Applicant herein is a teacher and wishes to adopt the subject minor. She is 59 years old and though visually challenged from childhood she has been educated to Masters Level, is a teacher at [Particulars withheld] School for the Blind where she also resides, and also works as a part time lecturer at [Particulars withheld] University. Her gross monthly income is about KShs.140,000/=. In 2015, the Applicant adopted a female child named Baby CA, now HWW in Nairobi Adoption Cause No. 85 of 2013. HWW is ten years old and resides with the Applicant. The said child is already enrolled in school. The Applicant has never married but appears to have a strong bond with her siblings and her parents. She subscribes to the Christian faith.

3. Pursuant to the order of the court on 25/3/19 the guardian *ad litem*, also a teacher at [Particulars withheld] school for the Blind and the Children Officer Thika have filed their reports. Also, on record is the social enquiry report by the adoption agency, Buckner Kenya Adoption Services. The court has reviewed these reports and other material on record. What emerges from these is that the Applicant though visually handicapped is otherwise in good health and is a responsible, mature, and stable person. She has demonstrated previous capacity to care for and provide for the first adopted child since 2013. Equally, she has taken in a young nephew and is providing for him. These children, from the report by the children officer, appear to have bonded well, first with the Applicant who plays the role of putative mother, and among themselves as siblings.

4. The Applicant's motivation to the proposed adoption is to enlarge her family and to get an opportunity to care for and provide for the subject child, and the other children in her care. She appears to have a strong love for children and during court appearances, it was evident that the Applicant despite her handicap is very much in control as a parent and that the subject child views her as such. Her social network within her own family appears strong as evidenced by the support she has received from the younger sister who lives with her, and the entire family concerning the proposed adoption. She also has a good income and occupies a house in Thika School for the Blind. The Applicant has a steady source of income and appears emotionally prepared for the parenting role.

5. The court has also considered the provisions of Section 158(2)(b) of the Children Act which limits adoption orders in favour of a female Applicant in respect of a male child to special circumstances. In this case, the Applicant has already adopted and assumed parental responsibility in respect of a female child and is currently caring for a young nephew. She has demonstrated prior commitment and responsibility as a parent to these two children. Moreover, she is a teacher by profession and evidently passionate about issues relating to children. In my opinion these are special circumstances under item 3 and 5 of the Adoption Committee Guidelines for Special Circumstances, of January 2010. The Applicant therefore qualifies for a local adoption.

6. Equally, upon reviewing the facts of this case, it is evident that the subject minor stands to benefit from the adoption which will enable him grow up within a loving and supportive family setting. No doubt this is in his best interests. See Article 53 of the Constitution and Section 4(3) of the Children Act. In the circumstances, the court is persuaded to grant prayers 1 to 4 of the Originating Summons filed on 26th October 2018.

SIGNED AND DELIVERED ELECTRONICALLY THIS 2ND DAY OF OCTOBER 2020.

C. MEOLI

JUDGE