



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
ADOPTION CAUSE NO. 6 OF 2020
IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001
AND THE CHILDREN (ADOPTION) REGULATIONS 2005
AND
IN THE MATTER OF FW (MINOR)
EWN.....APPLICANT

JUDGMENT

EWN, hereinafter “The Applicant” is a Kenyan Citizen aged 33 years. She has filed this Adoption Cause by way of Originating Summons basing it on Sections 154, 156 (1), 157 (1), 158 (1) a, 159 (4) (6) (7) (8)a, 160, 162, 163, 164 (1) and 170 of the Children’s Act No. 8 of 2001, Regulations 24, 25 and 26 of the Children (Adoption) Regulations 2005 and Section 24 of the Interpretation and General Provisions Act Cap. 2 of the Laws of Kenya and all other enabling provisions of the law. The Applicant seeks the following orders:

1. THAT the Applicant, EWN, be authorized to adopt FW (Minor).
2. THAT the Registrar of Births and Deaths do cause entry to be made in the Adoption Register with regard to this child and the child be considered as a Kenyan Citizen.
3. THAT SMN and EMMW be appointed as the legal guardians of the minor.
4. THAT upon adoption the child to retain her name FW.

The Applicant states that she has met all the legal prerequisites set out for adopting the minor and has sufficiently bonded with the subject minor.

The Applicant has sworn an affidavit in support of the Origination Summons. Counsel for the Applicant, Ms Gicheha, instructed by Vusha, Onsembe & Mambiri Advocates, made oral submissions in support of the Originating Summons. This court conducted the hearing of this matter through virtual proceedings following Guidelines of the Ministry of Health in view of the prevailing Covid 19 Pandemic. I have read the entire court file. I have read the Supporting Affidavit and all the attachments. I have read and considered the oral submissions by Ms Gicheha. It is my understanding that the minor is the daughter of JWN (deceased) and JMM. The minor was born in Thika on 5th November 2004 as certified in the Birth Certificate Entry No. [...]. She has a brother known as AM who is not subject to these proceedings. The relationship between JMM. and JWN was an informal one and lasted 5 years. Out of that relationship the minor and her brother AM were born. Their mother JWN died on 6th August 2019 as affirmed by death certificate Entry No. [...].

Following the death of their mother, FW and her brother AM were left under the care of their maternal grandmother JWN. The Applicant is sister to the mother of the minor and aunt to the minor and her brother. She supported her mother Janet in taking care of the two children following the death of their mother. From the attached documents, specifically the Affidavit by JMM dated 17th December 2019, he approached the Kenya Children’s Homes Adoption Society and informed them of his intention to offer the minor for adoption. He was counselled and taken through a Memorandum under section 17 (a) and (b) of the Children Adoption Regulations 2005. He signed a Certificate of Acknowledgement as a confirmation that he had understood the Memorandum. He also gave his consent for adoption of FW by the Applicant.

I have seen the Certificate Serial No. [...] by the Kenya Children’s Home Adoption Society declaring the minor free for adoption and a Report dated 18th December 2019 from the Kenya Children’s Homes Committee freeing the minor for adoption. This paved the way for the

Applicant to approach the court for the orders she is now seeking. I have also noted that on 6th September 2019 the Applicant was appointed Legal Guardian by the Children's Court and on 27th February 2020 Mr. Chris Wachira Theuri was appointed Guardian Ad Litem of the minor. Mr. Chris Wachira Theuri has filed a report on the minor dated 24th June 2020. The report gives positive feedback on the relationship between the minor and the Applicant. I have read the report on the Applicant prepared by the Kenya Children's Homes dated 2nd March 2020 addressed to this court. It is positive. It recommends the Applicant as suitable to adopt the minor.

In line with the orders of this court, there is also a report from the Chief Children Officer, Ministry of Labour and Social Protection, Department of Children's Services, Nairobi County. It is dated 27th February 2020 and makes recommendations that the Applicant has met the requirements for adoption provided in the Children's Act. It is also a positive report.

The Applicant is a single woman aged 33 years having divorced her husband. One of the documents the Applicant has attached is a copy of an order from The Court of General Justice District Court Division, Wake County, North Carolina USA granting the Applicant and one DM absolute divorce. She is related to the minor as her aunt. She is sister to the minor's mother. From the submissions made in court, she is a business woman in Kenya and also has a salaried job in the United States of America where she resides. To that effect, the Applicant has attached a copy of United States of America Permanent Residence Card and Driving Licence as proof that she resides and works in New Jersey USA. She has attached copy of her employment particulars showing she is employed at The Arc of Somerset County USA. The Applicant has also attached copies of bank statements as testimony that she has the means necessary to take care of the minor.

I have considered this matter. I have carefully read and considered all the attached documents. The Applicant and the minor are related as aunt and niece respectively. They have bonded well given that the Applicant has been assisting her mother and grandmother of the minor JWN to take care of the minor and her brother. All the reports on the Applicant and the relationship she enjoys with the minor are positive. They all recommend that the Applicant is suitable to adopt the minor. I have noted with satisfaction that the Applicant has means to take care of the minor. I note that the Applicant is aged 33 years while the minor is 16 years as of today, the 5th November 2020. That makes the Applicant 17 years older than the minor. The provisions of Section 158 of the Children's Act comes to mine. It provides thus:

Adoption applicants

An adoption order may be made upon the application of a sole applicant or jointly by two spouses where the applicant or at least one of the joint applicants—

158. (1) (a) has attained the age of twenty-five years and is at least twenty-one years older than the child but has not attained the age of sixty-five years; or

(b) is a relative of the child; or

(c) is the mother or father of the child.

I have noted that this provision is couched in permissive terms. I have also taken into account that the Applicant is not a stranger to the minor but a blood relative. She enjoys good relationship with the minor. I have no reason to doubt that the Applicant will take good care of the minor and bring her up with the utmost care and protection. I have taken into account the provisions of the law as laid down under Article 53 (2) of the Constitution of Kenya 2010 that **A child's best interests are of paramount importance in every matter concerning the child.** I am satisfied that the minor will receive the best upbringing under the care of the Applicant and that the minor's best interests shall be taken into account in all decisions regarding the minor. Having noted that all necessary consents including that of the minor, the intended legal guardians and her biological father have been obtained, I have no hesitation but to allow this matter. I hereby allow the Originating Summons dated 17th January 2020 and grant the prayers as follows:

- 1. THAT the Applicant EWN is hereby authorized to adopt FW - Minor.**
- 2. THAT the Registrar of Births and Deaths shall cause entry to be made in the Adoption Register with regard to FW and that FW shall be considered as a Kenyan Citizen.**
- 3. THAT SMN. and EMM are hereby appointed Legal Guardians of FW.**
- 4. THAT the minor shall retain her name FW.**
- 5. THAT CWT is hereby discharged from being Guardian Ad Litem.**

DATED, SIGNED AND DELIVERED THIS 5TH DAY OF NOVEMBER 2020 THROUGH VIRTUAL PROCEEDINGS.

S. N. MUTUKU

JUDGE