



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

ADOPTION CAUSE NO. 139 OF 2018

IN THE MATTER OF THE CHILDREN'S ACT 2001

AND

IN THE MATTER OF BABY CWW aka BABY LG

JWW

ZBN.....APPLICANTS

JUDGMENT

1. Through an Originating Summons dated 10th September 2018 and filed on 28th September 2018 pursuant to sections 154,155,156, 157,158,159,160,1663,164,and170 of the children's Act, the applicants herein sought orders to the effect that:

a. The applicants be authorized to adopt baby CWW aka baby LG, who is to be known as LWW and the Registrar General be directed to enter that adoption order into the Register of adoptions;

b. JWMand HNN be appointed as legal guardians of the minor herein; and

c. The child be presumed to have been born in Kenya.

2. The application was supported by the applicant's affidavit sworn on the 10th September 2018 jointly by the applicants stating that they are a married couple having solemnized their marriage on 13th December 2009 under cap 151 laws of Kenya (now repealed).The adoptive father is a pastor ministering in his own church while the second applicant is engaged in supporting her husband in church activities.

3. However, their marriage has not been blessed with any child of their own hence the motivation to adopt a baby. Subsequently, they made an application to Buckner Kenya Adoption Services on 31st July 2017 seeking to adopt a child.

4. Concerning the baby, she was born on 28th May 2017 to one CWW at Pumwani maternity hospital who later on 1st June 2017 absconded leaving the child behind. The hospital authority reported the matter to Shauri Moyo Police Station vide OB No. 18th June 2017. The baby was admitted to House of Charity Children's Home by Kamukunji Office through Buckner Kenya Adoption Society. On 14th March 2018, the child was committed to the care of House of Charity Children's Home through the Children's Court at Nairobi vide care and protection case number 71 of 2018.

5. Vide their initial letter dated 6th June 2017, and final letter dated 26th February 2018, Shauri Moyo police station confirmed that nobody had claimed the child since she was abandoned. The child was declared free for adoption by the Buckner Kenya Adoption Services on the 27th April 2018, vide certificate S/number [Particulars withheld]. The child stayed in the home until 1st may 2018 when she was placed under the care and control of the applicants for a mandatory three months consecutive period preceding the filing of this proceedings pursuant to section 157(1) of the children's Act.

6. Through a Chamber Summons dated 10th September 2018, Robert Omondi was on 25th October 2018 appointed as guardian ad litem in compliance with Section 160 (1) of the Children's Act. Together with the Director Children Services they were ordered to file an assessment and evaluation report.

7. The Director Children Services filed the assessment and evaluation report on 20th December 2018 and the guardian ad litem filed his on

5th March 2019. In their respective reports, they stated that the child had fully settled and was well taken care of. Both stake holders recommended that the applicants are fit to adopt the baby describing them as responsible people, caring, financially stable, mentally, physically and psychologically fit to be able to take care of the baby hence fit to adopt one.

8. During the hearing, the applicants expressed their strong desire to adopt the baby with whom they had fully bonded and that they understood the consequences of the adoption and their obligations to the baby including inheritance of their property.

9. Before any order or decision affecting or concerning a child is made, the paramount consideration must be the best interests of the child (**See Article 53 (2) of the Constitution and Section 4 (2) (3) of the Children's Act**). Although there is no standard or universally acceptable definition of what constitutes best interests of a child, Justice Kimaru had this to say in the case of **(M.A. vs R.O.) (2013) eKLR**:

“What is the best interest of the child has not been defined by the law. This is as it should because the best interests of each particular child will depend on the circumstances of each particular case at any one particular time. What is not in dispute however is that there are certain minimum requirements of the child. This includes the right of a child to be provided with shelter, food, clothing and education. The child is entitled to medical care. The child's welfare should be taken care of under the best possible circumstances. The child is also entitled to parental guidance. This guidance shall, where possible, be provided by both parents. The child is further entitled to be given a suitable, conducive and loving environment in which to grow up”.

10. The baby herein was abandoned by her birth mother who disappeared never to return. Nobody has turned up to claim the baby. The court went an extra mile and summoned an officer in charge of medical records (PW3) to confirm that indeed the baby was abandoned in their facility. Consequently, the need for consent is hereby dispensed with. Like any other child, the baby herein is in need of parental care and love, provision for basic necessities like food, shelter, clothing, education, medical care and above all, generational identity which the applicants are capable of providing. I am satisfied that the applicants have met all the legal requirements for local adoption as per the Children Act, 2001. Accordingly, in the best interests of the child, the application is allowed with orders as follows:

(a) That the Applicants herein JWW and ZBN are authorized to adopt baby CWW aka LG who henceforth shall be known as LWW.

(b) That the baby's date of birth shall be 28th May 2017 and place of birth Pumwani Maternity Hospital, Nairobi County, Kenya.

(c) That the Registrar General be and is hereby directed to enter the order in the adopted children's register.

(d) That the Director Immigration department to issue the child with a Kenyan passport.

(e) That the guardian ad litem herein be and is hereby discharged.

(f) That JW and ZBN be and are hereby appointed as legal guardian to the child in the event of death or incapacitation of the Applicants.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 17TH DAY OF MAY, 2019.

J.N. ONYIEGO

JUDGE