



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

ADOPTION CAUSE NO. 15 OF 2019

IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001

AND

IN THE ADOPTION OF BABY L.W. (MINOR)

JWN.....APPLICANT

JUDGMENT

1. Through an Originating Summons dated 17th February 2019, the applicant sought orders that: she be authorized to adopt Baby LW; JWM be appointed as the guardian ad litem; consent of the biological father be adopted as it is or the same be dispensed with; the Director Children Services be directed to provide an assessment report with regard to the adoption of the minor; JWM be appointed as legal guardian to LW upon granting of the adoption and, the Registrar General be ordered to make the entries in the adopted children's register in respect of the minor.
2. The application is supported by a statement in support and the annexures thereof sworn and filed the same day. Pursuant to the Chamber summons dated 17th February 2019, JWM was appointed as guardian ad litem on 7th February 2019.
3. The applicant herein aged 57 years is a lady with three biological children born out of various relationships which never materialized to any marriage. She is an aunt to the minor being a sister to the minor's mother who is now deceased having succumbed to diabetes the year 2005.
4. The minor now aged 17½ years is a niece to the applicant. After the demise of her mother, the applicant took up the responsibility of guardianship thus taking care of her like her child.
5. The motivation to adopt the minor is firstly, informed from the point of view that having grown up together with her cousins, she had gotten so attached and fully bonded to the family. Secondly, she does not know of any other mother besides the applicant. Thirdly, the aunt who is also residing in U.S.A. would like to adopt the minor so as to afford her the necessary child support.
6. Having been fully counselled and advised on the consequences of adoption, the minor, her father and siblings have given their consent to the adoption process. The baby was declared free for adoption by Change Trust Adoption Society on 8th September 2016 vide freeing certificate No. xxxxx.
7. Prior to the hearing, the Director Children Services, Change Trust Adoption Society and the guardian ad litem had filed their respective assessment and evaluation reports dated 18th March 2019, 8th September 2016 and 11th June 2019 thus recommending the adoption.
8. During the hearing, the applicant implored the court to allow her adopt the minor while acknowledging that she understood the consequences of adoption. On the other hand, the minor's opinion was sought and the father's consent who confirmed that they were agreeable to the adoption process.
9. I have considered the application herein, affidavit in support and, materials presented before the court. The applicant is an aunt to the minor whose mother died when the girl was aged four years old. Since then, it is the applicant who has taken full parental responsibility in bringing her up including paying her school fees.
10. In view of kinship relationship these proceedings are qualified to be local adoption. The applicant is a Kenyan as well as an American

citizen. She is aged 57 years effectively falling within the age bracket of 25 years and 65 years in compliance with Section 158 (2) of the Children's Act.

11. According to the assessment and evaluation reports submitted by the stakeholders, the applicant has met all the legal requirements relating to adoption and therefore qualified to adopt the baby. She is a Christian without any criminal record. Financially, she is stable earning over 2000 USA dollars per month out of dress making and sale of second hand clothes besides working in an elderly home in Washington DC. I have no doubt the applicant has met the necessary legal requirements to adopt the baby.

12. The question however is whether the adoption is in the best interest of the baby. In any decision making affecting the affairs of a baby, the cardinal principle for consideration is the best interests of a child. This principle is clearly captured under Article 53 (2) of the Constitution and Section 4 (2) and (3) of the Children's Act.

13. The minor has been in the care and control of the applicant. She has all along regarded her as her mother since her biological mother died. She does not know of any close relative to refer to as a mother. She has enjoyed close attachment to her aunt and cousins more than her siblings. She will definitely enjoy parental care and guidance under the care of her aunt. She will also gain from her aunt's spiritual, psychological, mental and financial support. As a basic requirement, the minor is guaranteed good education, medical care, food, clothing and shelter all of which I find to be attributes of a child's best interests.

14. Since there is no objection from any quarter and the necessary consents pursuant to Section 159 of the Children's Act having been obtained and more importantly from the father, it is my holding that the adoption is in the best interest of the child. Accordingly, I am inclined to make the following orders;

(a) That the applicant herein JWN is authorized to adopt baby LW who henceforth shall be known as LWM

(b) That her date of birth shall be the 12th July 2001 and place of birth [particulars withheld] Kikuyu in Kiambu County Kenya

(c) That the Registrar General shall enter the adoption order in the adopted children's register

(d) That the Director of Immigration shall issue the minor with a Kenyan passport

(e) That the guardian ad litem is hereby discharged

(f) That JWM be and is hereby appointed as legal guardian in the event of death or incapacitation of the applicant before the child attains age of majority.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 5TH DAY OF JULY, 2019.

J.N. ONYIEGO

JUDGE