



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

ADOPTION CAUSE NO. 17 OF 2017 (OS)

AND

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

AND

IN THE MATTER OF BABY LW also known as LW

AND

AN APPLICATION FOR ORDERS OF ADOPTION OF BABY LW also known as LW

BY

HNJ

JUDGMENT

1. By the Originating Summons dated 6.9.17, the Applicant HNJ seeks to adopt the child Baby LW also known as LW. The Applicant is a single woman born on 12.3.63. She is a resident of [Particulars withheld] area in Likoni, Mombasa County. She previously adopted a child in 2015 and now seeks to adopt the child herein.
2. The record shows that Baby LW was born at the Coast Provincial General Hospital on 19.5.15. Her mother however absconded upon delivery and left the child unattended in the ward, never to return. The matter was reported at Makupa Police Station *vide* Occurrence Book Number [xxxx]. On 22.6.15, the child was admitted at Baby Life Rescue Centre for care and protection pending committal. Thereafter on 10.12.15, the child was formally committed to the said centre by the Children's Court at Tononoka, Mombasa in Protection and Care Case No. 308 of 2015 for a period of 3 years. By a letter dated 14.6.16, the Officer in Charge of Makupa Police Station confirmed that no person had surfaced to claim the child over 6 months since the child was rescued.
3. By an Order of this Court of 22.11.17, MPN was appointed as the guardian *ad litem* for the child pending the hearing and determination of the adoption application, in accordance with Rule 8 of the Adoption Rules.
4. The Applicant has gone through the requisite assessments, and reports in respect thereof have been duly filed. Change Trust, a registered adoption society arranged the adoption of the child and duly filed a social inquiry report in respect of the Applicant and a declaration report in respect of the child. In compliance with Section 156 of the Children Act, the adoption society by its certificate serial number [xxxx] declared the child free for adoption on 8.9.16. The report by MPN, the Guardian *ad litem* was filed on 20.3.18 while that of Mbito Mvurya, the Likoni Sub-County Children Officer, for the Director of Children Services dated 27.2.19 was filed on even date. All these reports are favourable and draw the conclusion that adoption of the child by the Applicant will be in the best interests of the child.
5. It is noted that the child has been in continuous care and control of the Applicant a for a period of over 3 years since 27.5.16, which is more than the statutory 3 months stipulated under Section 157 of the Act. The Applicant is neither younger than 25 years nor older than 65 years. She is more than 21 years older than the child. The requirement of Section 158 of the Act has thus been met. For the Applicant, this is a second adoption. She adopted a boy now named AWLM *vide* adoption order dated 4.9.15 in Adoption Cause No. 31 of 2014. This child is well assimilated in the Applicant's home. The Applicant has been reminded of the consequences of an adoption order as well as the rights of an adopted child. She shall assume all parental rights and duties of the biological parents in respect of the child. I am satisfied that she fully understands that she cannot under any circumstances give up the child. The adoption order is final and binding during the lifetime of the child and that the child shall have the right to inherit her property together with the other adopted child.

6. The Applicant has demonstrated that she has the psychological and emotional capacity as well as the material resources to raise the child together with the other adopted child in a loving home environment. From my observation in Court the child appears to have bonded well with the Applicant. She proposes to name the child IMLM. The Applicant has nominated ZVN to be the legal guardian of the child in the event of the Applicant dying or becoming incapacitated before the child is of full age. The Court examined the proposed legal guardian and is satisfied as to her readiness, willingness and ability to be legal guardian of the child.

7. Having taken into account the foregoing factors, this Court has formed the opinion that it would be in the best interest of the child to be adopted by the Applicant.

8. The Court is further satisfied that all the legal requirements for a local adoption have been met and makes the following Orders as prayed in the Originating Summons herein:

a) The Applicant HNJ holder of national identity card number [xxxx] is hereby allowed to adopt Baby LW also known as LW, who shall henceforth be known as IMLM.

b) ZMN holder of national identity card number [xxxx] is hereby appointed legal guardian of the child in the event that the Applicant dies or is otherwise incapacitated before the child attains the age of eighteen years.

c) I direct the Registrar General to enter this order in the Adoption Register.

d) MPN, the guardian *ad litem* is hereby discharged.

DATED, SIGNED and DELIVERED at MOMBASA this 4th day of October 2019

M. THANDE

JUDGE

In the presence of: -

.....**for the Applicant**

.....**Court Assistant**