



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

ADOPTION CAUSE NO. 68 OF 2017

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

AND

IN THE ADOPTION OF BABY C O ALIAS C O (MINOR)

M W KAPPLICANT

JUDGMENT

1. By an amended Originating Summons dated 24th May 2018 but filed on 25th May 2018, the applicant herein M W K sought for orders; that she be authorized to adopt baby C.O. alias C.O. who shall henceforth be known as J W K; that the consent of the biological parents of the said child be dispensed with since the minor was abandoned at birth; that the Registrar General do enter her name in the appropriate entries in the adopted children's register; that F V M and P A O be appointed as legal guardians to the baby and that the court does issue any other orders it may deem necessary in the interest of the child.

2. The application is predicated upon an affidavit deponed on 24th May 2018 by the applicant and the annexed relevant documentation in support of her prayers. The applicant who is a Kenyan citizen and a single female applicant aged 45 years old is working as an [particulars withheld]earning a monthly salary of [particulars withheld]. Despite every effort including medical intervention to get a baby, the applicant has been unable to get her own biological child. The motivation to adopt the minor herein is propelled by the desire to help a needy child and the urge to have a family of her own.

3. Regarding the baby who is estimated to have been born on 8th July 2015, she was supposedly abandoned at birth within Kabete area from where she was rescued by a Good Samaritan who was passing by. The incidence was subsequently reported at Kabete Police Station vide O. Book No. XXX. As a child in need of protection and care, she was referred by the police to Nest Children's Home. Later, on the 14th August 2015, the Children Officer Westlands office presented the baby before the Nairobi Children's Court vide P and C Case No. XXX for formal committal order which the court issued thus committing the baby to Nest Children's Home for a period of three years.

4. Following confirmation by the police through their final letter dated 31st March 2016 that nobody had laid claim over the baby, the process of adoption commenced. After examination, elaborate enquiries and upon assessment and evaluation of the applicant, Little Angels Adoption Society through their case committee sitting held on 29th July 2016 found her suitable to adopt the baby. The child was declared free for adoption vide certificate S/No. XXX. Later on 3rd August 2016, the baby was placed under the care and control of the applicant for the mandatory three 3 months period.

5. Pursuant to the fulfillment of the preliminary requirements for adoption, the court appointed M M as guardian ad litem on 18th May 2017 and directed the Director Children Services to file an evaluation and assessment report within 45 days.

6. Prior to the hearing, the Director Children Services, Guardian ad Litem and Little Angels Adoption Society filed their evaluation and assessment reports dated 8th February 2018, 23rd February 2018 and 1st May 2017 respectively recommending the applicant as being morally, mentally, physically, psychologically, spiritually, socially and financially stable and therefore suitable to adopt the baby. During the hearing, the applicant pleaded with the court to allow her adopt the baby after confirming that she understood the consequences of the adoption.

7. I have considered the application herein, affidavit in support and the mandatory stake holder's reports which are favorable to the applicant adopting the baby. The issues that crystallize for determination are whether; the baby is available for adoption; the applicant meets the

requisite conditions for adoption and lastly; is it in the best interests of the baby.

8. The subject (baby) was abandoned presumably by the mother on the road side on 8th July 2015. As evidenced by the final letter from the police department Kabete Police Station dated 3rd March 2016, every effort made to trace the mother and or close relative (s) has been fruitless. Accordingly, nobody has claimed the baby hence consent pursuant to Section 159 (1) of the Children's Act is dispensed with.

9. Following the declaration of the baby as being free for adoption on 29th July 2016 about a year after the birth, the baby is well above six weeks and below 18 years in compliance with Section 156 (1) of the Children's Act.

10. Section 157 (1) of the Children's Act provides that, a child who is a resident within Kenya may be adopted whether or not the child is a Kenyan citizen, was or not born in Kenya provided that no application for an adoption order shall be made in respect of a child unless the child concerned has been in the continuous care and control of the applicant within the republic for a period of three consecutive months preceding the filing of the application and both the child or applicant as the case may be evaluated and assessed by a registered adoption society. In the instant case, the baby was born within Kenya and placed under the control and care of the applicant on 3rd August 2016 and the application made on 25th May 2018 thus complying with Section 157 (1) of the Children's Act.

11. The baby now aged below 8 years having been abandoned within the Kenyan soil is by dint of Article 14 (4) of the Kenyan Constitution presumed to be a Kenyan. It is my holding that the baby has met the necessary conditions to be adopted.

12. As to the suitability of the applicant to adopt the baby, the adoptive mother is a female Kenyan citizen aged between 25 years and 65 years being the mandatory age bracket for purposes of adoption proceedings in compliance with Section 158 (1) of the Children's Act. By virtue of nationality, the adoption herein qualifies to be a local adoption. The applicant is fully aware of the consequences of the adoption and has duly been assessed and evaluated by the mandatory stakeholders whose reports recommend her as medically, morally, financially, socially, physically, psychologically and economically stable. To that extent I am persuaded sufficiently to conclude that the applicant is suitable to adopt the baby.

13. Is the adoption in the best interests of the baby? Article 53 (2) of the Constitution underpins the best interests of a child principle as a cardinal consideration before making any decision or order concerning or affecting the affairs of a baby. Similar position is underscored under Section 4 (2) and (3) of the Children's Act. Sub-Section 2 provides-

“In all actions concerning children whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”.

14. The minor having been abandoned and nobody has come forward to claim her, it is in her best interest that she finds a home where she will be guaranteed shelter and some form of family belonging and generational identity. The applicant is a person of means earning about Kshs [*particular withheld*] per month according to her pay slip. The adoptive mother has no criminal record and is a staunch Christian thus providing a solid foundation for spiritual growth for the baby.

15. Besides, the child who has fully bonded with the applicant is assured of getting basic necessities like food, clothing, medical care, and education, psychological and material support from the applicant who has demonstrated love for the baby. The baby will also enjoy some sense of family belonging which extends to the family members of the applicant who are in full support of the adoption.

16. For the above reasons stated, I am convinced and sufficiently persuaded that the adoption herein is in the best interests of the baby hence do allow the application with orders as follows:

(a) That the applicant herein M W K be and is hereby authorized to adopt baby C.O alias CO henceforth to be known as J W K.

(b) That consent of the biological parent or parents be and is hereby dispensed with.

(c) That the baby's date of birth shall be 8th July 2015 and her place of birth Muthiga, Nairobi County.

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

(e) That the Director Immigration be and is hereby directed to issue the child with a Kenya passport.

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

(g) That F V M and P A O being friends to the applicant be and are hereby appointed as legal guardians to the child in the event of death or incapacitation of the applicant.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 1st DAY OF NOVEMBER, 2018.

J.N. ONYIEGO (JUDGE)