



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

ADOPTION CAUSE NO. 85 OF 2015

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

AND

IN THE ADOPTION OF BABY KC (MINOR)

BY

MWW.....APPLICANT

JUDGMENT

1. Through an Originating Summons dated 1st April 2015 and filed on 2nd April 2015, the applicant herein sought orders:

- (a) That the child the subject of these proceedings be presumed to be a Kenyan citizen by birth.
- (b) That the director of immigration be authorized to issue the child with a Kenyan passport.
- (c) That the applicant be authorized to adopt baby KC to be known as HNW.
- (d) That PNW, be appointed as the legal guardian of the child in the event of death or incapacity of the applicant before she is of full age and fully self reliant.
- (e) That the court be pleased to make any further orders it deems necessary.

2. The application is supported with a statement dated 1st April 2015 and filed on 2nd April 2015 together with a bundle of documents. The applicant is a single lady although separated from her former marriage which lasted from 1992 to 2002.

3. The applicant who is aged 56 years now has not been blessed with a baby of her own the very reason why her marriage broke down. Her motivation to adopt the baby is propelled by her love for the children and also the desire to have a child considering that her marriage hit the rock for inability to get one. She is a farmer as well as a business lady operating her own hotel which generates a monthly income of about 15,000/=.

4. The baby the subject of these proceedings is estimated to have been born on 16th December 2012. On 16th July 2013, the minor was offered to African Gospel Church by her biological mother for adoption. Unfortunately, the mother disappeared before signing a consent offering the baby for adoption. After three months, a report was made to Nakuru Police Station as the mother could not be traced to give her final consent. The report made vide OB No. 96/14/11/13 confirmed that every effort made to trace the mother was futile. A final police letter dated 17th June 2014 confirmed that the mother could not be traced nor her relatives.

5. Subsequently, the minor was on 22nd November 2013 formally committed to African Gospel Church baby center by Nakuru Children's Court vide protection and care case No. 534/2013 for a period of 3 years. Later, the Kenya Children's Home held its case committee sitting and declared the baby free for adoption on 13th August 2014 and a certificate S/No. 1136 issued in compliance with Section 156 (1) of the Children's Act. The minor was then placed with the applicant for a mandatory 3 months foster care and control on 1st September 2014 pursuant to Section 157 (1) of the Children Act.

6. Contemporaneously filed with the Originating Summons is a Chamber Summons dated 1st April 2015 seeking the appointment of Bernard Njenga Macharia as the guardian ad litem to the baby and submission of assessment report by the Director Children Services. On 5th October 2018, the proposed guardian was appointed and Director Children Services directed to file assessment and evaluation report within 45 days.

7. Prior to the hearing, the Director Children Services, Kenya Children's Homes and guardian ad litem made various visits to the home of the applicant and filed their reports dated 24th April 2017, 21st April 2017 and 14th March 2018 respectively recommending the adoption.

8. Both stake holders described the applicant as a staunch Christian worshipping at Apostolic Church Mucherere with no criminal record. She is financially, medically, physically and emotionally stable. Further, they confirmed that the applicant having been taken through a series of counseling sessions had understood and appreciated the consequences of adoption and had fully embraced the same.

9. During the hearing, the applicant appeared quite jovial while holding the baby who in return tightly held her as well while calling her mom a manifestation of positive bonding. She pleaded with the court to allow her adopt the baby as she confirmed that she had fully understood the consequences of adoption.

10. I have considered the application herein, statement of particulars in support and materials placed before court plus assessment reports by various stakeholders. The issues that render for determination are:

(a) Whether the child has met the criteria for adoption.

(b) Whether the applicant has met the requirements to adopt the baby.

(c) Whether the adoption is in the best interest of the baby.

11. The baby herein was offered for adoption by her mother to African Gospel Church staff on 16th July 2013 about Eight months after the estimated date of birth. The mother allegedly disappeared before signing a consent offering her for adoption. Subsequently, a report was made after 3 ½ months to Nakuru Police Station who confirmed through their final report dated 17th June 2014 that they had failed to trace the mother to the baby nor her relatives. For those reasons consent pursuant to Section 159 of the Children's Act is dispensed with.

12. The baby who is now over six weeks the minimum age requirement for adoption pursuant to Section 156 (1) of the Children's Act, is a Kenyan citizen. Under Section 157 (1) of the Children's Act, she is qualified for adoption. For avoidance of doubt, section 157(1) provides that:

“A child who is a resident within Kenya may be adopted whether or not the child is Kenyan citizen, or was or was not born in Kenya”.

The child has been in the continuous care of the adoptive parent preceding this application in compliance to Section 157 (1). I am convinced that the child has met the necessary criteria to be adopted.

13. Is the applicant suitable? The applicant is a Kenyan citizen aged 56 years now which age bracket is above 25 years and below 65 years and 21 years more than the baby pursuant to Section 158 of the Children's Act.

14. She has been recommended by both stakeholders who after making home visits found her financially stable, medically fit, a Christian with no criminal record and a responsible parent. While giving evidence in court, the applicant struck me as a responsible mother who had fully integrated with the baby. I have no doubt she is suitable to adopt the baby.

15. Is the adoption in the best interest of the baby? Before a court, organization, body or institution would made any decision affecting the affairs of a child, the paramount consideration must be the best interests of the baby. This is a Constitutional imperative underpinned under Article 53 (2) of the Constitution. Similar requirement is replicated under Section 4 (2) (3) of the Children's Act and Article 3 of the United Nations on the rights of a child.

16. The baby who was abandoned by her mother at African Gospel Church has nowhere to call home except where she is currently staying. The applicant has demonstrated her ability to offer parental responsibility as a mother.

17. The baby deserves basic necessities like food, shelter, clothing, medical care, education, emotional and psychological support. She needs somewhere to call home and above all generational identity. The applicant has exhibited her skills of parenthood. She aspires to support, educate and take care of the baby in all spheres of life. The best interest of the baby is paramount and due consideration must be placed on this aspect by courts when making decisions.

18. In the best interest of the baby herein this court is inclined to allow the application with orders as follows:

(a) That the applicant be and is hereby authorized to adopt baby K.C who henceforth shall be known as HNW.

(b) That the baby's date of birth shall be 16th December 2012 and place of birth Nakuru, Kenya.

(c) That the Director General to enter the adoption in the adoption register.

(d) That the immigration department to issue the baby with a Kenyan Passport.

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

(f) That PWK be and is hereby appointed as the legal guardian of the baby incase of death or any eventuality befalling the applicant.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 6TH DAY OF DECEMBER, 2018.

J.N. ONYIEGO

(JUDGE)