



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYAHURURU

ADOPTION NO.2 OF 2019

IN THE MATTER OF

RNW.....MINOR

- V E R S U S -

IN THE MATTER OF

EWN.....1ST APPLICANT

AND

SRY.....2ND APPLICANT

R U L I N G

Pending before this court for consideration is the Originating Summons dated 20/3/2019 in which the two applicants, EWN and SRY seek inter alia, to adopt RNW (the minor) under the provisions of the Children's Act and Regulations.

The applicants have sworn a joint affidavit to the effect that the 1st applicant is the biological mother of the minor while the 2nd applicant is the step-father.

The 1st applicant is a Kenyan born in Nyahururu, Passport No.[...], while the 2nd applicant is a British Citizen Passport No.[...]; that the biological father of the minor, EKM, has not been part of the minor's life and the children Court in Children Case No.[...]/2017 gave legal custody to the 1st applicant. The applicants claim to be married under the Laws of Kenya though there is no evidence on record of marriage in terms of a marriage certificate.

When the parties appeared before the court on 6/11/2019, the court asked counsel to address it on the issue of jurisdiction. Whether it is an international or domestic/local adoption" That is the only issue under consideration before the court can hear the Originating Summons. Counsel now on record, Mr. G. Chege filed submissions on the issue of jurisdiction.

It is the oral submissions that the applicant relates to kinship adoption but not a foreign adoption. Counsel has referred the court to some decided cases.

In *Re: R.W.K. a.k.a. R.W.B. (minor) Adopt.75/2017 (2018 eKLR)*, the issue was whether the adoption was affected by the cabinet moratorium or inter country adoptions because whereas the baby was a niece to the 2nd applicant, the 2nd male applicant was a

German national. J. Onyiego considered the application and held that the application was a kinship adoption and granted the order in the best interest of the child. The court did not specifically rule on whether it amounted to a domestic Adoption or it was international adoption.

In Adoption Cause 75/2017, J.N.A. by Zoo and C.A.N. J. Achode held that:

“According to the guidelines for alternative Family Care of Children in Kenya pg.153, kinship adoption is adoption by adopters who are kin or relatives within the extended family of the child. Kenyans living abroad and wishing to adopt a Kenyan child will adopt as Kenyans by way of domestic adoption. This is therefore considered to be a local adoption.”

Again in Adoption Cause 7/2018 in J. a.k.a. J.N. minor and P.W.K. and A.N.W. (1st and 2nd applicants), the applicants were said to be residents of Nyeri and domiciled in U.S.A. The adoption was in relation to a grandchild of the applicants and the court held that it was a kinship adoption and allowed it.

Having considered the above, authorities, I am persuaded to find that a kinship adoption is a domestic adoption to which this court has jurisdiction. The adoption application before me being a kinship adoption, this court has jurisdiction to hear it and will proceed to hear the Originating Summons. It is so ordered.

Dated, Signed and Delivered at NYAHURURU this 19th day of December, 2019.

.....

R.P.V. Wendoh

JUDGE

PRESENT:

Mr. G. Chege for applicant

Ropita - Court Assistant



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