



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KIAMBU**

**ADOPTION CASE NO. E004 OF 2020**

**IN THE MATTER OF THE CHILDREN'S ACT**

**AND**

**IN THE MATTER OF BABY JL a.k.a. K (THE CHILD)**

**AND**

**IN THE MATTER OF AN APPLICATION FOR ADOPTION**

**BY**

**CWM.....APPLICANT**

**JUDGMENT**

1. **CWM**, the sole female applicant herein, is a 50-year-old business lady. She is a single mother of one daughter. By an Originating Summons application dated 17<sup>th</sup> September 2020, she prays for an adoption order in respect of **baby JL a.k.a. K**.
2. The applicant states that her motivation to adopt is her love for children and God. She sees the act of adopting a child as her personal social responsibility.
3. The baby was abandoned in (withheld) Sub-County in Bomet County after birth. The matter was reported to (withheld) Police Patrol Base and thereafter the baby was committed to **African Gospel Church Baby Centre** by the Bomet Children's court.
4. No one has claimed the child and efforts to trace any relatives have been futile. The baby was declared free for adoption on 22<sup>nd</sup> February 2019.
5. The applicant attached bank statements in respect of her savings, business operations and rental accounts as proof of her financial capability to take care of the child. She also attached her medical report, her police clearance certificate and recommendations from two referees. Those referees stated that the applicant is financially able to take care of the needs of the baby and that she will create a loving and caring environment for the nurturing of the baby.
6. The **Sub-County Children Officer** Thika West filed a report in support of the adoption. The officer conducted a home visit and formed the opinion that the child had integrated well into the family. The applicant's daughter was supportive of the adoption and has given her written consent to the adoption. That Children's Officer by that report was impressed by the fact that the applicant and her daughter had opted not to employ a house help to give them an opportunity to bond with the baby.
7. The *guardian ad litem* also filed a report in court in support of the adoption. The report states that the child is receiving holistic growth, love and care from the applicant. The guardian also noted the support from the extended family especially the grandparents. At the time of the home visit, the child was happy, healthy and comfortable. The guardian was of the opinion that the adoption would be in the best interests of the child.

**ANALYSIS**

8. The applicant herein is a sole female applicant seeking to adopt a male child.

9. **Section 158 (2)** of the children's Act provides that:-

*“An adoption order shall not be made in favour of the following persons unless the court is satisfied that there are special circumstances that justify the making of an adoption order: -*

*(a) A sole male applicant in respect of a female child;*

*(b) a sole female applicant in respect of a male child;*

*(c) an applicant or joint applicants who has or both have attained the age of sixty-five years;*

*(d) a sole foreign female applicant*

10. The court has considered Guidelines of the **National Adoption Committee** under the Ministry of Gender, Children and Social Development, dated 13<sup>th</sup> January 2010. Those Guideline gives special circumstances that can be considered in the case of a sole applicant seeking to adopt a child of the opposite sex. Those guidelines provide that a sole female applicant maybe allowed to adopt a male child in the following circumstances:

*1. When the child is a relative.*

*2. When the child has special needs and the applicant is willing and has capacity to take care of the child.*

*3. Where the applicant has adopted or has another biological child or children over whom she is willing to exercise parental responsibility.*

*4. Where the child to be adopted has a sibling who is also being adopted by the applicant.*

*5. Proposed applicant is the only person available to adopt the child.*

*6. Where the applicant is the legal guardian of the child or children appointed by will or in adoption proceedings and the parents die or become permanently incapacitated.*

11. The applicant herein has another biological child, a daughter born in October 2002, and is therefore eligible under the guidelines to adopt a male child. Apart from the fact the applicant has another child I find that all the reports filed before this court are very favourable to the adoption by the applicant. Further, it is in the best interest of the baby to be afforded an opportunity to be in a loving family, as he obviously is, as discerned from the reports before court.

12. The parent/guardian of the baby, if any is unknown, and all attempts to trace them has been unsuccessful. An adoption application requires that it be accompanied by a consent, amongst other requirements, of the parent/guardian: see **Section 158 (4)** of the Children's Act (hereafter the Act).

13. Having considered the background information set out above I am of the view that this is a case where this Court can dispense with the requirement for consent for this adoption of such a parent/. Such dispensation is provided for under **Section 159 (1) (c)** of the Act, as follows:-

*(1) The court may dispense with any consent required under paragraphs (a), (b), and (c) of subsection (4) of section 158 if it is satisfied that—*

*(a) . . .*

*(b) . . .*

*(c) in any case, except in respect of the consents required under paragraphs (e) and (f) of subsection (4) of section 158 that the person whose consent is required cannot be found or is incapable of giving his consent or that his consent has been unreasonably withheld.*

14. This Court does hereby dispense with the requirement of the consent of the parent/guardian of the child.

15. From the above, I find that the applicant has fulfilled the legal requirements necessary for the making of an adoption order. The applicant is well aware of her responsibility in adopting the child and the consequences of making such an order.

#### **DISPOSITION**

16. From the foregoing, I grant the prayers in Originating Summons dated 17<sup>th</sup> September 2020 in the following terms:

a. **CWM** is hereby allowed to adopt **baby JL a.k.a. K**

b. **Baby JL aka K** shall henceforth be renamed **JMM**

c. The child's date of birth is hereby declared to be 17<sup>th</sup> March 2017 in Bomet County.

d. The child is presumed to be a Kenyan Citizen.

e. **MMM and ENW** are hereby appointed legal guardians of the child.

f. The *guardian ad litem* is hereby discharged.

g. The **Registrar General** is hereby directed to make the appropriate entries into the Adopted Children's register.

h. The consent of the biological parent/s or guardian is hereby dispensed with.

**JUDGMENT DATED AND DELIVERED AT KIAMBU this 21<sup>st</sup> day of FEBRUARY, 2022.**

**MARY KASANGO**

**JUDGE**

Coram:

Court Assistant: - Mourice

For the applicant: - N/A

**COURT**

JUDGMENT *delivered virtually.*

**MARY KASANGO**

**JUDGE**