



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

ADOPTION NO. 25 OF 2017

IN THE MATTER OF THE CHILDREN'S ACT 2001

AND

IN THE MATTER OF AN APPLICATION FOR ADOPTION OF BABY Y.M.A. alias Y.Z. (THE CHILD)

BY

PAN.....APPLICANT

JUDGMENT

1. Vide an Originating Summons dated 30th August 2017, the applicant herein seeks, *inter alia*, for orders to adopt baby **YMA**.
2. The applicant is now 39 years old. She is a single, Kenyan business lady. Currently, she resides in (withheld) Sub-County. The applicant has no prior criminal convictions and is in good physical health.
3. The child's biological mother was not married to the child's biological father. When the child was born the biological mother was living together with the biological father of the child. Following her birth the biological father rejected the child and indeed, prior to the birth he had encouraged the mother to procure an abortion. The mother however declined to act on the instruction of the father. The baby was born on 19th April 2016 at (withheld). On the mother's consent the child was admitted to **New Life Home Trust**. On 19th August 2016 the mother signed the legal consent, consenting to offer the child for adoption. The mother cited financial constraints and lack of support from her immediate family, as the reasons for giving up the child for adoption. The child was declared free for adoption by **Little Angels Network**, a registered Adoption Society.
4. The biological father has not given his consent for the child to be adopted. A social worker of the Little Angels Network, namely, **Ms. JM**, contacted the father on 28th September 11th November and 16th November 2016 and on each such occasions the father promised to visit the offices of Little Angels Network, but he did not. Finally he was unavailable on his cell phone when subsequently contacted. Accordingly all efforts to obtain his consent did not bear fruit.
5. Section 158 (4) of the Children's Act (hereinafter the Act) requires an application for adoption to be accompanied with written consents, one of which is the consent of the parent/guardian of the child. **Section 158 (4) (c)** of the Act, requires consent be obtained of a father of a child born out of wedlock where such a father has acquired parental responsibility, in respect of that child.
6. **Section 159** of the Act provides for dispensation with that consent of a parent/guardian who abandoned, neglected persistently, failed to maintain, or persistently ill-treated the child. The court should have the best interest of the child in giving such a dispensation. Dispensation under **Section 159 (1) (c)** of the Act can also be granted where the parent/guardian of the child cannot be found.
7. Consideration of the above statutory provision and bearing in mind the facts of this matter it becomes clear that dispensation of the biological father's consent should be issued by the court. The father failed to take on parental responsibility, he also failed to maintain the child and most importantly he cannot be traced despite concerted effort by different agencies.
8. The baby was placed under the care of the applicant from 28th December 2016. The baby is now around 5 years and attending (withheld) Nursery School.
9. The *guardian ad Litem* filed a report recommending the adoption of the child. The Children's Officer was also in support of the adoption. That officer noted that the applicant had bonded well with the child. The child is well taken care of and happy.

10. The applicant attached the child's mother consent, explanatory memorandum for biological parent, the child's admission form to New Life Home Trust, Police Clearance Form, a title deed and a sale agreement in support of the application.

11. This matter came up for hearing before Justice C. Meoli on 25th February 2019. The Learned judge noted, with concern, some inconsistency on the reports of the *guardian ad litem* and the Children Officer's report, relating to the means of livelihood of the applicant and her place of residence. The Children Officer's report indicated that the applicant regularly left the child under the care of a neighbour until 9.00PM when she would return from work.

12. On 23rd May 2019, Justice C. Meoli gave directions for the applicant to provide further information on her financial capability, living arrangements and her willingness to give direct and proper care to the child.

13. The applicant filed a supplementary affidavit dated 28th October 2021 in response to the said directions. By that affidavit it is noted that the applicant is now a resident of (withheld) Sub-County. She has built her own house where she lives with the child. The child is attending nursery school. The applicant requests that on the adoption order being issued the child be known as **LZ.**, the name she has been known since she was placed under the care of the applicant.

14. In my view the concerns expressed by Justice C. Meoli have been well addressed in the supplementary affidavit.

ANALYSIS

15. The applicant has been maintaining the child for about 4 years. The child is now attending school. Both the children officer's report and that of the *guardian ad litem* indicate that the child has bonded well with the applicant. The child refers to the applicant as Mum and she is happy around her.

16. The applicant has shown sufficient proof of her financial means and ability to take care of the child. She has made adjustments in her lifestyle to allow her give direct care to the child. She has equally met the other legal requirements under the Children's Act for the adoption of the child.

17. The court is satisfied that the applicant is aware of her responsibility in adopting the child. The adoption is in the best interest of the child.

DISPOSITION

18. This Court therefore grants the following orders:-

- a. **Baby YMA alias YZ** is to be known as **LZ** and is presumed to be a Kenyan Citizen
- b. The applicant **PAN** is hereby authorized to adopt baby **LZ**.
- c. **JAN** is hereby appointed the legal guardian of baby **LZ**.
- d. The Registrar General is hereby directed to enter in the Adopted Children's register an entry recording the adoption.
- e. The consent of the biological father is hereby dispensed with.

JUDGMENT DATED AND DELIVERED AT KIAMBU THIS 21ST DAY OF FEBRUARY, 2022.

MARY KASANGO

JUDGE

Coram:

COURT ASSISTANT: - MOURICE

FOR THE APPLICANT: - N/A

COURT

JUDGMENT DELIVERED VIRTUALLY.

MARY KASANGO

JUDGE