



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

ADOPTION CAUSE NO. 4 OF 2017

IN THE MATTER OF THE CHILDREN'S ACT 2001

AND

IN THE MATTER OF AN APPLICATION BY RMM FOR AN ORDER OF ADOPTION

IN THE MATTER OF ADOPTION OF BABY J Alias JM

AND

IN THE MATTER OF AN APPLICATION BY RMM

JUDGMENT

1. By Originating Summons dated 28th September, 2017, pursuant to Sections 4 & 154 of the Children's Act 2001, Section 9 of the Kenya Citizenship and Immigration Act 2011 & Article 14 of the Constitution the applicant seeks:

1. **That the applicant be authorized to adopt Baby J**
2. **That the consent of the biological mother be dispensed with.**
3. **That upon the making of the adoption order the said child be known as JM.**
4. **That the Registrar General do make the appropriate entry of JM in the Adopted Children's Register.**
5. **That the child JM be presumed to be a Kenyan citizen born in Kenya and that the Director of Immigration Services do issue JM with a Kenyan passport.**
6. **That JKM be appointed legal guardian of the child JM.**

2. The applicant who is Kenyan citizen by birth was born in 1971 and is a teacher at [Particulars withheld] Primary School. She received the baby into her custody on 01/02/2011 and has continuously taken care of her ever since. She subsequently solemnized her marriage to BM on 03/01/2015 but has no child of her own.

3. The baby was admitted at Meru Level Five Hospital for medical attention on 12/06/2011 after she was found abandoned in Imenti North District, Meru County. The matter was then reported at Meru Police Station and booked vide OB. No.[....]. The baby was committed to Child Welfare Society of Kenya Embu on 30/09/2011 vide care and protection case number [....].

4. The Child Welfare Society conducted both physical and media tracing with an effort to trace the baby's family but to no avail. Police at Meru Police Station also commenced investigations with a view of tracing the baby's family and on 18/04/2012 indicated in their final letter that their efforts to trace them were fruitless. Since nobody came forward to claim the baby since her abandonment, she was declared free for adoption by Child Welfare Society of Kenya on 28/05/2020 and a certificate issued. The baby was placed with the applicant on 01/12/2011 for foster care pending adoption as confirmed by the foster care placement forms dated 01/12/2011 and signed by the applicant on the same day.

5. The District Children's office and the Child Welfare Society of Kenya filed their respective assessment reports on 17/01/2018 and 12/10/2020 recommending the applicant herein for adoption of the baby.

6. Having carefully looked at the application herein, affidavits in support and the testimonies by the applicant and her husband, the guardian

ad litem and the proposed legal guardian, I isolate the issues for determination to be:

a. Is the baby herein available for adoption?

b. Has the applicant met the requisite conditions for adoption?

c. Is the adoption in the best interests of the baby?

7. The baby was abandoned in Imenti North District, on 12/06/2011. As evidenced by the final letter of the police dated 18/04/2012, all efforts to trace the parents and relatives of the baby have been futile. The baby has not been claimed by anybody and to that extent, I am of the opinion that the requisite consent under Section 159 (1) of the Children's Act should be dispensed with. The baby was declared free for adoption on 28/05/2020 by which time she was over the mandatory minimum age limit required of a baby before adoption pursuant to Section 158 (1) of the Children's Act.

8. The baby has been under the continuous foster care and control of the applicant from 01/12/2011 to date which is more than the requisite three months envisaged in Section 157(1) of the Act.

9. **Article 14 of the constitution** recognizes that any baby below 8 years found within Kenya and whose parents or nationality is unknown should be presumed to be a Kenyan citizen. The baby was aged about 2 years when she was found and I hold and find that she qualifies to be presumed a Kenyan citizen and there having been filed all requisite reports that declare her available for adoption I see nothing to make her unavailable.

10. Is the applicant suitable to adopt the baby?

The applicant is a Kenyan citizen aged between 25 years and 65 years being the mandatory age requirement for the applicant before adopting any baby in accordance with Section 158 (1) of the Children's Act. She and her husband are fully aware of the consequences of this adoption and appreciate the same. Having been duly assessed by the District Children's Office, the Child welfare Society of Kenya and the guardian ad litem, she was found to be medically, emotionally, mentally, morally and economically fit. To that extent, I find the applicant suitable to adopt baby J Alias JM.

11. Is the adoption in the best interests of the baby?

The principle of the best interests of a child is aptly captured under **Article 53 (2) of the constitution** as "**A child's best interests are of paramount importance in any matter concerning a child**". The same principle is further buttressed under **Section 4(2) and (3) of the Children's Act** which provides that "**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**".

12. Having been abandoned and now unclaimed, the baby has no known relative or family to identify with, she is clearly in need of care and protection. The applicant has demonstrated being financially able to cater for the baby's basic needs including shelter, food, clothing, education and medical care.

13. When the court interviewed the applicant I formed the opinion that she comprehends her responsibilities and obligations towards raising the baby. The husband equally confirmed to court his appreciation of the adoption order and his willingness to support the child as his own blood. The baby was equally interviewed by the court and she gave the court an impression of a happy and confident child. From the interviews conducted by the court and the reports filed by various agencies involved, no doubt is left in my mind that the baby is guaranteed a safe home for economic, moral and psychological growth and support. The baby has been living with the applicant from 01/12/2011 to date and has fully bonded with her and her relatives and to separate them in my view would be prejudicial to the child's best interest. I find and have formed the opinion that it is in the best interest of the baby that she be adopted by the applicant. I therefore hold and find that the application by RMM is merited and serves the best interest of the child for which reason I direct that an adoption order does issue for the adoption of **BABY J alias JM** by the applicant **RMM**

DATED, SIGNED AND DELIVERED AT MERU THIS 26TH DAY OF FEBRUARY, 2021

Patrick J O Otieno

Judge

In the presence of:

Rose Muthoni Mugambi the applicant in person.

Benjamin Mungathia, spouse to the applicant