



REPUBLIC OF KENYA

IN THE HIGH COURT

AT KERUGOYA

ADOPTION CAUSE NO. 2 OF 2019

IN THE MATTER OF CHILDREN'S ACT

AND

IN THE MATTER OF BABY FA...CHILD

AND

SWG.....APPLICANT

JUDGMENT

1. The applicant, by an Originating Summons taken out on the 5.4.2019, seeks orders of adoption of Baby boy FA (herein referred to as baby FA), aged 3 years and 3 months as at 4th December, 2020 to be known as FMW.

2. A Children's Officer Report, prepared by the Kirinyaga County Department of Children's Service on the suitability of the proposed adoptive parent, dated 15.10.2019 was filed on the 4.12.2019.

3. The child in the matter is a boy, who was abandoned by his mother on 4.10.2016 at a residential house in Mitugu in Imenti South Sub County vide OB 16/6/2016 – Mitunguu Police Station.

He was placed under the care and protection at the Charitable Children's Institution, New Life Home Trust under the Change Trust Adoption Society in Children's Case No. 19 of 2016.

4. The child was declared for adoption pursuant to **Section 156 (1) of the Children's Act** by the case committee of KKPI – Adoption Society on the 26.9.2013.

By a Foster Care Agreement dated 9.3.2018, the child was placed with the applicant for the three mandatory period prior to filing these adoption proceedings.

5. By the Applicant's statement and affidavit in support of the adoption application, and the social enquiry report filed by the Children's Department the applicant is a female single woman aged 52 years, with no biological children.

She is employed and with a salary and owns land parcel No. [xxxx] Ha where she intends to build a home for herself and the child.

6. The report is favourable for the adoption save for the legal impediment contained in **Section 158 2 (b) of the Children's Act 2001** that a single applicant of either gender to adopt a child of the opposite gender **unless** the court is satisfied that there are special circumstances that justify the making of an adoption order, in the circumstances.

7. The Sub-County Children's Officer in this report, upon highlighting the legal bar, under **Section 158 2 (b)**, urges the court to be guided by the principle of the best interest of the child, taking into account that since the 9.3.2018 when the child was placed for fostering with the applicant the child has bonded well with the applicant who has the capacity to protect, care and provide, and give a home to the boy child.

8. Section, 158 (2) (d) of the Children's Act provides:

That an adoption order shall not be made in favour of a sole female applicant in respect of a male child unless the court is satisfied that there exist special circumstances to justify the making of an adoption order.

9. The Children's Officer (report dated 4.12.2019) though recommending the adoption application, raised reservations in view of the bar stated under the Act. I have considered the report and the best interest of the child which, in all circumstances, must be paramount – **Section 76 of the Children's Act**.

10. The court has considered guidelines for special circumstances for a sole female Kenya adopting a male child. They were developed by the Adoption Committee of the Ministry of Gender Children and Social Development. They are as follows:-

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 **Proviso** to the section states that the court may refuse to make an adoption order in respect of any person if it is satisfied that it would not be in the best interest of the child.

This therefore gives the court unfettered discretion to, upon consideration of the best interest of the child, to grant an order of adoption to a female applicant to adopt a male child, if it is for the child's best interest.

12. Among the special circumstances under the Guideline No. 5, the proposed applicant is the only person available to adopt the child. The child was placed at the children's home on the 16.6.2016. He was released for adoption by the court on the 25.9.2013. There is no evidence that during the period prior to the applicant's application, a period of about two years, that any other person placed an application for the male child's adoption

13. It is common knowledge and I stand corrected if not so, that boy children in children's homes are not the first option for adoption by single women, and they tend to stay therein for long period, and often married couples are the main applicants, due to, in my opinion, inheritance right of the boy child, and objections by the applicant extended families.

14. It is therefore, an exceptional circumstance that a female applicant applied to adopt the male child, to give the child a home and a family to grow into – **Section 76 of the Children's Act**.

15. The Adoption Society, Change Trust Case Committee sitting on the 9.5.2015 was satisfied that the applicant was a fit and suitable person to adopt a male child and approved her application.

The court likewise, upon consideration of the guidelines and the interest of the child, is satisfied that under guideline No. 5, the applicant should be granted her wish to adopt the male child.

16. The best interest of the child's right is a principle derived from **Article 3 of the United Nations Convention** on the rights of the child that:-

“in all actions concerning children whether undertaken by the public or private social welfare institutions, courts of law administrative authorities of legislative bodies, the best interests of the child shall be primary consideration”.

17. Pursuant to **Section 76 of the Children's Act**, and for the beneficial welfare of the child, I am persuaded that allowing the application for the adoption of the male child by the single female applicant meets the paramount consideration, the best interest, and welfare of the child.

18. Back to the originating summons application.

I examined the proposed adoptive parent and the proposed legal guardians. They all understand the duties and responsibilities the adoption order embodies.

In particular, the applicant understands that if the order of adoption is made, she will take the child as her own, with all attendant responsibilities, to take care, educate, and mould him into a responsible citizen and the inheritance rights of the child.

19. Having met all the necessary legal requirements, and there being no known objections or bar to the grant of the application, the only one under **Section 158 (2) (d) of the Children's Act** having been resolved as stated above, I have no hesitation in allowing the application.

20. Accordingly, the originating summons dated 5.4.2019 is allowed as follows:-

- 1. The applicant SWG is authorized to adopt Baby FA, to be known as Baby FMW.**
- 2. FWG is hereby appointed the legal guardian of the child.**
- 3. The child is presumed to be a Kenya citizen, and the consent of the biological parents of the child is hereby dispensed with.**
- 4. The Registrar – General is hereby directed to enter into the Adopted Children’s Register on entry recording the adoption.**

Orders Accordingly.

Delivered, dated and signed at Kerugoya this 23rd Day of February, 2021.

J. N. MULWA

JUDGE