



In re Baby AJ (Adoption Cause 15 of 2018) [2021] KEHC 9795 (KLR) (30 April 2021) (Judgment)

Neutral citation: [2021] KEHC 9795 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
ADOPTION CAUSE 15 OF 2018
JN ONYIEGO, J
APRIL 30, 2021
IN THE MATTER OF BABY AJ

BETWEEN

MMM APPLICANT

AND

LITTLE ANGLES NETWORK RESPONDENT

JUDGMENT

1. Through an originating summons dated September 14, 2018, MMM (hereinafter referred to as the applicant) came to this court under sections 11, 154, 157, 158, 159, 160, 161, 163, 164 and 170 of the *Children Act* and article 14 (4) of the *Constitution* of Kenya 2010 seeking orders that; she be authorized to adopt the minor herein; the baby to be declared as a Kenyan citizen; upon making the adoption order the baby be known as EK; upon making the adoption order, VMP and GIM be appointed as legal guardians of the child and, upon making the adoption order, the Registrar General do enter the adoption order in the adopted children's register.
2. According to her statement in support of the application, she averred that; she is a Kenyan citizen born on December 12, 1964; she is a single lady with no biological child; has adopted another child known as FM aged 12 years and that, she is a nurse by profession working with the Ministry of Health at [particulars withheld] Health Center.
3. Her motivation to adopt the child is borne out of the desire to make a difference to a child's life by providing a home and stable family.
4. Concerning the baby, he was on September 14, 2014 found by a good Samaritan having been abandoned near Bomu clinic Mombasa. That the good Samaritan took him to the village elder who in turn reported the incident at Changamwe Police Station *vide* OB No 73/14/9/14.



5. On September 19, 2014 the minor was admitted at Baby Life Center Mombasa. Thereafter, he was formally committed to the same institution on July 14, 2016 by Tononoka Children Court *vide* Care and Protection Case No 241/2016. Via their initial letter dated September 15, 2014, and final letter dated August 17, 2016, Changamwe Police Station confirmed that their effort to trace the child's parents and or relatives was futile.
6. Six months having lapsed since the abandonment report was made, the child was subjected to adoption process. During its case committee meeting held on August 26, 2016, Little Angles Network Services declared the child free for adoption. A freeing certificate S/No 001775 was issued to that effect. She was placed under the care and control of the applicant on August 31, 2016 for a continuous three months period in compliance with section 157 of the *Children Act*.
7. Upon institution of the suit herein, CDJ was on April 3, 2019 appointed guardian ad litem pursuant to a chamber summons dated September 5, 2018. The court then directed the Director Children Services and the guardian ad litem to submit their respective social inquiry reports within 14 days.
8. Prior to the hearing, the Director Children Services filed his report dated December 14, 2010 recommending the adoption. The guardian ad litem filed his also on May 9, 2019 approving the same. Little Angles filed its report as well on December 9, 2020 recommending the adoption.
9. All stake holders' reports described the applicant as; financially stable earning a monthly income of Kshs 45,000 from her employment; loving and caring, a Christian with no criminal record and most importantly, physically and mentally fit.
10. During the hearing, the applicant urged the court to grant her prayer to adopt the baby. She expressed herself that she is aware of the consequences of adoption and that it is permanent. She further acknowledged that the child shall have a right to inherit her property.
11. I have considered the application herein, materials in support and testimonies from various witnesses, the critical mandate bestowed upon this court is; to ascertain and be satisfied that the baby is legally available for adoption; that the applicant is suitable and has met the legal requirements to adopt the baby and, whether the adoption is in the best interests of the child.
12. The child herein was found by a good Samaritan having been abandoned near Bomu Clinic. A report was made to the village elder who in turn reported the matter to the police.
13. Despite every effort by Little Angles and the police Changmwe Police Station in tracing the parents or relatives to the minor, nothing fruitful came out. This is evident from the aforesaid initial and final letters from the police. In the absence of any person claiming the child, the requirement for consent as contemplated under section 158 and 159 is dispensed with. Concerning his nationality status, article 14 (4) of the *Constitution* is available. Under this provision, a child found in Kenya and who appears to be less than 8 years of age, and whose nationality or parent is not known, is presumed to be a Kenyan citizen. In the circumstances this case, the child is below 8 years hence deemed to be a Kenyan citizen by birth. of
14. Under section 157 (1) of the *Children Act*, any child who is resident within Kenya may be adopted whether or not the child was, or, was not born in Kenya. In view of the above and considering that the child has been declared free for adoption, it is my finding that the child is legally available for adoption.
15. Touching on the issue of the applicant's suitability, she has been described as financially stable, responsible, physically and mentally fit. She is a Kenyan citizen thus qualifying this adoption proceedings as being local. In terms of age, she was born in 1969 (52years) hence meets the requirement



under section 158 of the Children Act that a prospective adoptive parent should not be below 25 years and not more than 65 years and at least 21 years older than the adoptive baby.

16. She appreciates that she will be required to look after the child like her biological baby and that the adoption is permanent. I am therefore satisfied that she has met the requisite legal requirement to adopt the baby.
17. Regarding the question whether the adoption is in the best interests of the child, this court is enjoined to uphold article 53 (2) of the Constitution, section 4(2) and (3) of the Children Act as well as article 3(1) of the United Nations Convention on the Rights of a Child by underscoring the principle of the best interest of a child as the primary consideration before making any decision concerning or affecting a child.
18. The child herein was abandoned without trace of the parents. Nobody has come forth since 2014 to claim the baby. He has fully integrated with the applicant since placement in August 2016. It will be disastrous to separate him from the only home and family he has come to associate with. He is assured of basic provision like food, shelter, education, clothing, medical care and parental guidance.
19. I am convinced that, it is in the best interest of justice and the minor that the application herein be allowed which I hereby do by making orders as follows;
 - (a) The applicant is hereby authorized to adopt baby AJ alias unknown male child who thereafter shall be known as EM.
 - (b) That the child's date of birth shall be April 14, 2013 and place of birth Mombasa Kenya.
 - (c) That consent of the biological parents or guardian is dispensed with.
 - (d) That the child is hereby declared to be a Kenyan citizen.
 - (e) That the guardian ad litem is discharged.
 - (f) That the Registrar General is directed to enter the adoption in the adopted children's register.
 - (g) That VMP and GIM be and are hereby appointed as legal guardians to the minor in case of any eventuality befalling the applicant,

DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 30TH DAY OF APRIL, 2021

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JN ONYIEGO

JUDGE

