



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**ADOPTION CAUSE NO. 165 OF 2018 (O.S)**

**IN THE MATTER OF THE CHILDREN ACT NO. 8 OF 2001**

**IN THE MATTER OF ADOPTION OF BABY GBO (THE CHILD)**

**BY**

**JO (APPLICANT)**

**JUDGMENT**

1. The Applicant JO is a Kenyan citizen. She is single, has never been married and has no child of her own. She wishes as a single Applicant to adopt the child known as Baby GBO, a minor of the male sex, through the Originating Summons dated 22<sup>nd</sup> October, 2018 as amended on 17<sup>th</sup> May, 2021.
2. The pleadings indicate that the Applicant is a business woman and is also a [particulars withheld] by profession. She resides in Umoja Estate in Nairobi and professes the Christian faith. At present she is in Paris, France where she moved to sometime in the year 2020 to secure sponsorship for her PHD studies.
3. Records also indicate that the minor is a nephew to the Applicant having been born on 1<sup>st</sup> January, 2017 to the Applicant's brother EOO and his wife LAO, hereinafter referred to as the biological parents. A copy of a Certificate of Birth of serial no. [...] is on record. Whereas the child's biological parents assumed parental responsibility over him, he has never lived with them and was previously in the physical custody of his grandmother, MAO, until his grandmother's death on 26<sup>th</sup> August, 2017. A copy of a Certificate of Death of serial number [...] is on record in this regard.
4. On the demise of the child's grandmother M, the Applicant took up the legal and actual custody of the child at the request of the biological parents of the child who are both HIV positive and as a result suffer various illnesses. The Applicant also took legal and actual custody of the child's four siblings.
5. Kenya Children's Homes Adoption Society prepared and filed a report dated 20<sup>th</sup> November, 2018. They had also issued a Certificate of Serial No. 1487 dated 19<sup>th</sup> September, 2018 declaring the child free for adoption. The guardian ad litem MKK filed a report dated 14<sup>th</sup> April, 2021 which was favourable and recommended the adoption of the child by the Applicant stating that not only was it a kinship adoption but also that it would grant the child an opportunity to grow up in a loving, safe and nurturing home.
6. An officer from the office of the Director Children's Services conducted independent investigations and prepared and filed a report dated 24<sup>th</sup> March, 2021. At the date of the report, the Applicant was residing in Paris, France while the child, together with his siblings, were living with his parents in Oyugis, Homa Bay County. The officer established that the Applicant is financially and emotionally capable of providing for the up keep and education of the child. He recommended the adoption for reasons that it will serve the best interest of the child, who stands to gain by becoming the son of the Applicant. Further that this being a kinship adoption, the child will maintain his identity. He urged that the Applicant had met all the requirements for a local adoption.
7. Additionally, there is on record an affidavit of consent to the adoption of the child which was sworn jointly by the child's biological parents on 11<sup>th</sup> September, 2018. In it, they indicate that they had both agreed that the best way forward was to offer the child and his siblings to the Applicant for adoption since they are both HIV positive and in addition, E was epileptic and L asthmatic. Also that they depend on the Applicant for the provision of basic needs. On 30<sup>th</sup> July, 2018 they approached the Kenya Children's Homes Adoption Society and made clear their intention to offer the child to the Applicant for adoption. The implications of their decision were explained to them and they were taken through the "Adoption of Children - Explanatory Memorandum for Biological Parents/ Guardians Offering Child for Adoption". Thereafter, they duly signed a Certificate of Acknowledgment as a confirmation of their understanding of the Memorandum.
8. Notably, the child's biological father E has since passed away. A copy of a Certificate of Death of serial number [...] which indicates t Eric died on 21<sup>st</sup> April, 2021 is on record.

9. The Applicant, being a single female Applicant wishes to adopt a male child. **Section 158(2)** of the **Children Act** provides that an adoption order shall not be issued in favour of a sole female Applicant in respect of a male child unless the court is satisfied that there are special circumstances that justify the making of such adoption order.

10. The Adoption Committee established under **section 155(1)** of the **Children Act** issued guidelines on 13<sup>th</sup> January, 2010 in regard to circumstances that the court will take into account in determining whether the set of facts put forward by the Applicant fulfil the criteria of special circumstances. In the case of a sole female applicant adopting a male child, the following are circumstances which may be considered as special:

- i. When the child is a relative.*
- ii. When the child has special needs and the applicant is willing and has capacity to take care of the child.*
- iii. Where the applicant has adopted or has another biological child or children over whom she is willingly exercising parental responsibility.*
- iv. Where the child to be adopted has a sibling who is also being adopted by the applicant.*
- v. Proposed applicant is the only person available to adopt the child.*
- vi. 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.*

In the instant case, the child is a relative to the Applicant who is in the process of adopting the child's four (4) siblings.

11. EAO and CCA, a sister and aunt to the Applicant respectively, have by a joint affidavit sworn on 22<sup>nd</sup> October, 2018 consented to be appointed as legal guardians in the event that the Applicant is incapacitated and cannot care for the child. The Applicant's family members are aware of the proposed adoption and support it.

12. It is important to note that the orders sought by the Applicant herein relate to a child. In law, in any matter concerning a child the best interests of a child are paramount as provided under **Article 53(2)** of the **Constitution** and **section 4(3)** of the **Children Act**.

13. This is not only a local adoption but also a kinship adoption since the Applicant is an Aunt to the child. After a careful assessment of the reports filed herein, I am convinced that the Applicant has fulfilled all the legal requirements relating to the adoption of the child. Further that the Applicant meets the social parameters that are considered relevant to her taking on parental responsibility and custody of the child in this matter on a permanent basis as would be conferred by the adoption order sought.

14. I also note that the single Applicant was born on 20<sup>th</sup> January, 1978 and is therefore aged 43 years old. She is therefore within the age bracket eligible to adopt, being an adult below the age of 65 as provided by **section 158(1)** of the **Children Act**.

15. The child was present during the virtual hearing and appeared to be jovial and in good health. This court has therefore formed the opinion that it would be in the best interest of the child to be adopted by the Applicant. Not only does the child gain a warm and loving home and maintain his kinship ties, the adoption will also allow him to stay together with his siblings who the Applicant also seeks to adopt.

16. Reasons wherefore I allow the prayers sought in the Amended Originating Summons dated 17<sup>th</sup> May, 2021 and order as follows:

- i. The Applicant, Jacqueline Opollo is hereby allowed to adopt **Baby GBO (The Child)**. Upon adoption he shall continue to be known as **GBO**.*
- ii. His date of birth is 1<sup>st</sup> January, 2017, and the place of birth is Ogenya, Nyando.*
- iii. EAO and CCA are hereby appointed legal guardians of the child in the event that the Applicant dies, or is incapacitated by ill-health.*
- iv. The Registrar General is directed to enter this Order in the Adoption Register.*
- v. The Director of Immigration is hereby authorized to issue the child with a Kenyan passport.*
- vi. The guardian ad litem is hereby discharged.*

It is so ordered.

**DATED, SIGNED AND DELIVERED IN VIRTUAL COURT THIS 24<sup>TH</sup> DAY OF JUNE, 2021.**

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L. A. ACHODE

HIGH COURT JUDGE