



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 149 OF 2016

IN THE MATTER OF THE CHILDREN ACT 2001

IN THE MATTER OF RM, CHILD

AND

IN THE MATTER OF AN APPLICATION FOR ADOPTION BY GGR

JUDGMENT

The Applicant, GGR, has brought this Originating Summons under Sections 154, 158 and 160 of the Children Act 2001 and Section 3A of the Civil Procedure Act Cap 21 Laws of Kenya seeking to be authorized to adopt RM, a female child. He has made the following specific prayers:

1. That the Applicant GGR be authorized to adopt RM (infant).
2. That the Honourable Court be pleased to appoint GMW and CNM of P.O Box Number [xxx] Kiambu as the Legal Guardians of the child in the event that the Applicant dies or is incapacitated by ill-health.
3. That if the adoption order is granted, the said infant be known as JRW.
4. That the Registrar General do enter the said proposed name in the Adoption Register.
5. That costs of this Application be in the cause.

The Applicant also sought, through Chamber Summons dated 29th March 2019, to have SWT appointed Guardian ad litem for the infant. This was done on 23rd May 2019. The Guardian ad litem and the Director of Children Services were directed to investigate the suitability of the Applicant to adopt the child and file a report within 45 days from 4th April 2019. Both reports have been filed. That of the Director of Children Services is dated 26th October 2020 and that of the Guardian ad litem does not bear a date.

The child, subject of these adoption proceedings is presumed to have been born on 2nd January 2011. She was rescued by members of public from an unfinished pit latrine at Kware Village where she had been abandoned wrapped in a black polythene paper. Grace Nduta and Paul Nderitu took the child to Ongata Rongai Police Station where the report was booked in OB No. [xxxx]. The OCS referred the child to Fatima Care and Nutrition Centre where the child was admitted on 2nd January 2011 as a child in need of care and protection. On 13th August 2014 the child was transferred to Thomas Barnardo House through a letter from the Kajiado North District Children's Officer. On 12th September 2014 the child was officially committed to Thomas Barnardo Home vide orders issued by the Nairobi Children's Court in Care and Protection Case No. 273 of 2014.

After full investigation by the police from Ongata Rongai Police Station, there was no positive results of who the mother or parents of the child were. The police wrote a letter dated 31st July 2014 to that effect. The child was freed for adoption by the Kenya Children's Homes Adoption Society's Case Committee sitting on 15th October 2014. A Freeing Certificate Serial Number [xxxx] was issued pursuant to Section 156 (1) of the Children Act, 2001. Consequently, the child was placed under the care of the Applicant and his late wife on 30th October 2014. The child is currently aged about 10 years and goes to school at Karunga Primary School.

The applicant is single by virtue of having lost his wife RWG on 23rd December 2015 as per the attached death certificate No. [xxxx]. They had married in church on 4th January 1992. The initial application seeking to adopt the child was done on 16th December 2015, about one week before the wife died. Both had approached the Kenya Children's Homes Adoption Society on 4th June 2012 with the intention of commencing the adoption process. They were taken through the adoption procedures and process. A home visit was done and subsequent

interviews were conducted. Upon satisfying the Society, they were officially approved for placement with the child on 30th October 2014.

After the demise of his wife, GGR filed the current Originating Summons as the sole Applicant. He has filed a Statement to support the Application giving all the details of his status and confirming that it was his intention and that of his late wife to adopt the child and that the child had been placed with both of them during the lifetime of his late wife and that the child had bonded well with both of them. He states that he decided to proceed with this adoption after the wife died because the child had been under his continuous care and custody since 30th October 2014 and knows no other home. He states that he is in a position to take care of the child because he has the means to do so.

I have considered this matter. I have carefully read the reports from the Director of Children Services, the Guardian ad litem and that of the Kenya Children's Homes Adoption Society. They are all good reports and speak well of the Applicant and the circumstances that made him a single applicant. I am concerned about the current situation of the Applicant. I raised this concern to the counsel representing him during the hearing of this Originating Summons. I also note that the previous judge handling this file before I took over this matter also raised the same concern. The reasons for this concern are clear. The law under Section 158 (2) of the Children Act provides as follows:

An adoption order shall not be made in favour of the following persons unless the court is satisfied that there are special circumstances that justify the making of an adoption order—

- (a) A sole male applicant in respect of a female child;***
- (b) a sole female applicant in respect of a male child;***
- (c) an applicant or joint applicants who has or both have attained the age of sixty-five years;***
- (d) a sole foreign female applicant. (Emphasis has been added.)***

Ms Karanja for the Applicant addressed the court on this issue. She told the court that the child, now aged about 10 years, was placed with the Applicant when she was young and bonded well with the Applicant and his late wife before the wife passed on. She said that there is another adopted child, a boy and that the child subject of these proceedings knows no other home. She is comfortable with the remaining parent and that the Guardian Ad Litem has been very close to the child and has always been available for the child.

I have also noted that all the reports filed in this matter: that of the Director of Children Services, that of the Guardian Ad litem and that by the Kenya Children's Homes Adoption Society, were done in reference to the sole applicant and tell the story of the circumstances of the environment of the home where the child is currently living with the Applicant after the wife had died. All these reports indicate to the suitability of the Applicant as the only applicant to adopt this child. The reports also point out that the Applicant is also taking care of another adopted child, a boy.

Although the law under Section 158 (2) of the Children Act quoted above prohibits adoptions by a single male applicant where the child is female, I have considered this matter carefully in light of the reports filed herein and in light of the fact that the child has not known any other parent or home and I am satisfied that this is one of the cases where this court's discretion should be exercised in favour of the applicant herein because of the uniqueness of this Application. In my considered view, it is in the best interest of the child, given her age and the fact that she has lived with this family from the age of about 3 years and has bonded well with the family, to grant orders that allow her to continue living in the environment well known to her and to which she has well adopted.

I also note that the Applicant is currently about 63 years. He is within the legal requirements of applicants for adoption but being a single parent and widowed, he may need all the social support he requires to bring up the two adopted children. Although the Guardian Ad Litem has been supportive as indicated to this court, her legal duty to continue giving the support she has been giving will expire upon the granting of the orders being sought. This court is asked to appoint legal guardians for the child. Two people have been proposed, GMW and CNM. These are the people who must play their roles well to ensure that this child is well supported during her formative years.

In conclusion, I hereby allow the Originating Summons dated 29th March 2019 and grant the following orders:

- 1. That the Applicant, GGR is hereby authorized to adopt RM (the child).**
- 2. That the child shall henceforth be known as JRW.**
- 3. That the Registrar General is hereby directed to enter this adoption in the Adopted Children's Register.**
- 4. That GMW and CNM are hereby appointed Legal Guardians of JRW.**
- 5. That due to the circumstances of this case the Legal Guardians are hereby directed to keep a keen eye on the Applicant, the child and the home environment and to file annual reports, addressed to the attention of the Deputy Registrar of the Family Division of the High Court Nairobi with a copy to the Director of Children Services, on the progress of the child until the child attains age of majority and or is able to fend for herself. The first such report shall be filed in June 2022.**
- 6. That SWT is hereby discharged from Guardian Ad Litem.**

DATED, SIGNED AND DELIVERED THIS 24TH DAY OF JUNE 2021.

S. N. MUTUKU

JUDGE