



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU

ADOPTION CAUSE NO. 9 OF 2019

IN THE MATTER OF THE ADOPTION OF BABY PGO

JKM APPLICANT

VERSUS

NEWLIFE HOME TRUST.....RESPONDENT

JUDGMENT

The application

1. By an Originating Summons dated 18th November 2019, the Applicant a female Secondary School Teacher aged 58 years old seeks to adopt the child the subject of these proceedings with whom the applicant has lived since 2017 under a placement arrangement with the New Life Home Trust, Nyeri. The child's guardian ad litem and the Sub-County Children Officer, Imenti North, Meru County as well as the Adoption Society, KKPI Adoption Society, have filed their respective reports. The whereabouts of child's biological parents are unknown as she was abandoned at birth. Hence the prayer by the Applicants that the consents under Section 158(4) of the Children Act be dispensed with. The Applicant's friend and colleague Ms. JR has consented to act as legal guardian of the child.

Principles for the grant of adoption order

2. Pursuant to Article 53(2) of the Constitution and section 163 of the Children Act 2001, the court has to consider as paramount the consideration the best interest of the child. Primarily, the court must in accordance with the relevant provisions of the Children Act (Part XII of the Children Act) be satisfied as to –

- i. the availability of the child for adoption;
- ii. the consent or circumstances justifying waiver of consent of the parents of the child to the adoption;
- iii. the suitability of the applicant(s); and
- iv. the availability of protection and care for the child in the event of the inability of the applicant upon adoption.to provide and care for the adopted child.

The child

3. The child subject of the application is a girl aged six years (date of birth 24/5/2015). She was found abandoned at the Nyeri Level 5 Provincial General Hospital and her parents' whereabouts were unknown. The child, then aged 7 months was formally committed to the care of New Life Home Trust Nyeri initially for a period of 6 months by Committal order made on 26th July 2015 and thereafter for a period of 3 years by a Committal (Protection and Care) Order made on 14th January 2016 by the Nyeri Children's Court Case No. 66 of 2015, wherein the Nyeri Central Sub-County Children's Officer Patrick Ndirangu moved the Court by a report dated 20/7/2015 as follows:

"20/7/2015

P/C No. 66/15

RE: ABANDONED CHILD BABY SV

The baby was abandoned at Provincial General Hospital (PGH) Nyeri on 27/5/2015. Prior to the incident, the subject's mother one SV, had delivered at PGH casualty toilet on 24/5/2015.

The baby was admitted at the new born unit (IP NO. 387/15) while the mother was admitted at Maternity Ward (IP No. 2230). However, the subject's mother ran away on 25/5/2015 at 8.30pm. The matter was reported at Nyeri police station vide OB 08/26/05/2015. The whereabouts of the said mother is still unknown.

Since then the subject has been at the PGH new born unit. She is currently about 2 months old and in good health condition.

Recommendation

Your Honour the subject is a child in need of care and protection. The parent is yet to be traced. In the circumstances I recommend that the subject is committed to New Life Home Trust Nyeri, for 6 months.

Patrick Ndirangu

Sub County Children Officer."

4. By its **Final Report on Abandoned Baby Girl OB NO. 54/27/7/2015**, Nyeri Police Station (following its initial report of 7/8/2015) reported that-

"The baby mentioned above was born at Nyeri Provincial Hospital to one SV on 24/5/2015. The mother later absconded from hospital leaving the baby behind on 25/5/15 at 8:30pm. The matter was reported at this station by the hospital security guards on 26/5/15 vide OB NO. 8/26/5/15 as an absconder from hospital. The baby she abandoned in hospital was reported vide OB NO. 54/27/7/2015. The matter having been booked at this station for further investigations, into tracing the biological relatives have been fruitless."

5. The child was declared free for adoption under section 156 (1) of the Children Act, and a certificate therefor issued, by the Change Trust whose Case Committee sitting on 8th September 2016 "*upon review of the child's dossier was satisfied of her availability for adoption. The case committee therefore declared the child OE alias SV free for adoption.*"

6. Apart from diagnosis of prematurity at birth (34 weeks) on 24/5/2015 weighing 1.66kgs, she was at admission at the New Life Home from the new born unit of Provincial General Hospital, Nyeri two months later on 24/8/2015 weighing 3.2kgs and in good health as confirmed by the applicant in testimony before the court that she only noted a 3-4cm scar on her hand when she received her and her records indicated a negative HIV status and she had briefly used an inhaler presumably on account of her prematurity.

7. The child had been placed with applicant when she was one year nine months while staying with the applicant been enrolled at [particulars withheld] School at Meru class Pre-primary (PP2) and now set to join Grade One on 26th July 2021.

Consents

8. In the circumstances of abandonment of the child and the unknown whereabouts of the child's mother, the requirement for consent by the parents under section 158 (4) is waived. The proposed Guardian, a teacher colleague of the applicant, has consented by affidavit and testimony before the court to act as the legal guardian of the child and has accepted to take over the protection and care of the child in the event that the applicant is unable for any reason to provide and care for the child after the adoption.

The Applicant

9. The Applicant is a 58 years old secondary school teacher who lives in a three bedroomed home with her mother JN, 80, and a niece PK,17, of whom she is a legal guardian, has demonstrated regular income and property capable of providing for her mother, her said niece and the child subject of these proceedings. A confidential report to the adoption society by her Church Minister, Rev. Linus Mwenda indicates that, the applicant "loves kids and serves in Church Children Ministry." In her testimony before the court, the applicant disclosed her plan to secure the inheritance of the child upon the approval of the adoption by registering a portion of the plots of land that she owns in her name. She agreed with the legal position that upon adoption the child becomes her lawful dependant with inheritance rights over her property. In her own words when the court enquired whether she had any concerns on the health of the child, the applicant solemnly pledged that-

"I am happy to take the child despite her any medical condition and I shall support her in every way."

10. The applicant is a public officer as a teacher employed by the Teacher's Service Commission and in her testimony before the court she indicated that she was involved in pig rearing and planned to start poultry farming as she prepared for retirement. She demonstrated considerable regular financial income in salary and farm produce proceeds, ownership of two immovable properties in Kithoka within the municipality of Meru and a movable asset motor vehicle registration No. KDA[...], and is therefore in a suitable position of means to provide for the needs of the child.

11. The adoption was processed by KKPI Adoption Society whose Home Study Report for the Applicant filed in Court on 22nd April 2021 recommended that-

"From the Assessment conducted and the documents availed, KKPI Adoption Society Case Committee sitting on 26th October 2016 deliberated on the matter and they were satisfied that the applicant meets the requirement to adopt and passed Ms. JK be placed with a child who fits into her described ae and who is free for adoption."

12. The Sub- County Children Officer, Imenti North Mr. Joseph K. Mburu appeared before the court and made representations based on his respective reports dated 27/5/2021 on the suitability of the guardian ad Litem, MG, the Legal Guardian, JK and the Applicant, all which were positive in favour of the application for adoption. As regards the Applicant, the Children officer found as follows:

"OBSERVATIONS

J is capable of being the adoptive parent of Pleasant.

The applicant has financial ability to support the needs of the subject until she becomes independent. The applicant has satisfied section 159 of the Children's Act.

RECOMMENDATIONS TO THE COURT

It is my formed opinion that this Honourable court allows Janet KM to be the adoptive parent of PGO. This will be in the best interest of the subject.”

13. The court notes the position of the applicant’s extended family of her brother and sister in law who support the adoption.

The best interests of the child

14. The court considers that it is in the child's best interest to secure for the child a home where she may grow up in care and protection of a loving parent. There is no question that the child is better off with the applicant with whom she has lived for the last four formative years of her life than at the home which placed her with the applicant. With a home setting and parental love and care, the child shall be able to shed adverse emotional and physical trauma and neglect that abandonment engenders.

Statutory Reports

15. The reports by the Adoption Society, the Guardian ad litem and the Department of Children Services, Meru are all positive on the suitability of the Applicants. In addition, the Court examined the Guardian Ad Litem, MGK on oath before the court and also took oral representations by the Children Officer, Sub-County of Imenti North, Mr. Joseph Mburu.

Observation by the Court

16. The court had opportunity to observe the applicant and the child before the court. They had an easy relationship belying the apparent age difference and they had obviously bonded well during their 4-year stay together during the child’s placement with the applicant. The child looked happy, healthy, well-cared for and she appeared to feel safe with the mother around her, and from time to time the two shared friendly conversation. The applicant had calm and collected posture throughout the proceedings, a purposeful mien and a visible deep conviction of the solemnity and propriety of the responsibility that she has undertaken. The child and the applicant looked very good for each other.

Conclusion

17. The applicant being suitable adoptive parent, and the child being available for adoption and the court being satisfied of the compliance by the applicant with the relevant statutory requirements of the Children Act, as well as the overriding consideration of the best interest of the child, I allow the adoption of the child the subject of these proceedings by the Applicants, as prayed.

ORDERS

18. Accordingly, for the reasons set out above, the Court makes the following orders:

- (1) The Applicant **JKM** ID NO. [...] of P.O. Box [...] Meru, Kenya be authorized to adopt the child the subject of these proceedings to be known as **PGO**.
- (2) That the child subject of these proceedings shall henceforth be known as **PGO**.
- (3) That **JKR** I.D. No. [...] of P.O. Box [...] Meru, Kenya is approved as the child's legal guardian pursuant to section 164 of the Children Act.
- (4) The Registrar General is directed to make the appropriate entry in the Adopted Children Register pursuant to section 170 of the Children Act and to issue the Certificate of Adoption and Birth as necessary.

Order accordingly.

DATED AND DELIVERED ON THIS 23RD DAY OF JULY, 2021.

EDWARD M. MURIITHI

JUDGE