



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAJIADO

ADOPTION CAUSE NO. 1 OF 2021

(Formerly Adoption Case No. 11 of 2019 at Kitui)

IN THE MATTER OF THE CHILDREN'S ACT, 2001

AND

IN THE MATTER OF AN APPLICATION FOR AN ADOPTION OF BABY D (CHILD)

BY

MNN.....APPLICANT

JUDGMENT

1. The applicant filed an Originating Summons dated 15th July 2019, seeking an order from this court allowing her to adopt **Baby D**, a child who was abandoned at the at Tender Foot "N" Kangemi in Nairobi County, after birth on 10th December 2017. The incident was reported at Kabete Police Station under **OB No. XXXX**. The child was placed with The Nest Children Home for care and protection.
2. The applicants also seek an order that upon adoption, the minor be renamed **SM** and that **ANN** be appointed the Legal Guardians to the minor. She further seeks the general order that the Registrar General do make appropriate entries in the Register of Adoptions with respect to this adoption.
3. The Originating Summons is premised on the applicant's affidavits filed together with the summons. She states that the minor was born on about 10th December 2017 and was found abandoned; that she is a citizen of Kenya; she is not married and she is employed as a [Particulars Withheld] manager with [Particulars Withheld], Kitui but has now been transferred to Kajiado County. She is of good Christian faith and conduct.
4. The applicant state that the minor was declared available for adoption on 3rd August 2018 by Buckner Kenya Adoption Services. The child was received into her custody and care on 29th September 2018 and the child has been in her continuous custody and care since then; that the child was formerly committed to **The Nest Children Home** through a committal order issued by Nairobi Children court in **Care and protection case No. 8 of 2018** and the child was later made available for adoption by the adoption society. She also states that she is adopting the child on her own free will and that she has not received any inducement for this adoption. She has never made any application for adoption before.
5. The applicant attached consent by the proposed Legal Guardian and other documents in support of her application, including a report to demonstrate that the child was declared free for adoption and a pre-placement report. These, she states, show that the child is free for adoption.
6. The court directed the County Children Welfare officer, Kajiado County, and the Guardian Ad litem, **MMM**, to file reports on the applicant's suitability to adopt the child. The report by the County Coordinator, Children Services dated 15th July 2021 was filed on 21st July 2021 recommending adoption. It was signed by **Mr. Cosmas Karera Kiratu**, Sub County Children Officer, Kajiado West Sub County where the applicant resides. The Guardian Ad Litem's report is dated and filed on 1st July 2021, also recommending adoption.
7. During the hearing of the Originating summons, the applicant moved the summons and urged the court to allow it. She relied on the documents she filed in support of the Originating summons. The child was also present in court and so were the Guardian Ad Litem, the intended Legal Guardian and the Sub County Children Services all who supported the adoption.
8. I have considered the Originating Summons, the affidavits and all the documents filed and relied on. I have also considered the reports from the Children Office and the Guardian Ad Litem both of which recommend adoption for the interest of the child.

9. The child was born on 10th December 2017, but was abandoned by her unknown mother at Tender- Foot “N” Market Kangemi immediately after birth. The child was placed with The Nest Children’s Home on 11th December 2017 for care and protection and was named **D**. The minor was formally committed to the children home by the court on 17th January 2018 in **Care and Protection Case No. 8 of 2018**.

10. The minor was then made available for adoption through **Buckner Kenya Adoption Services**, an adoption society. The applicant took custody of the child on 29th September 2018 and has had custody of the child since then. The child’s biological parents’ identity and where about is unknown as the mother abandoned her at birth and her biological father is unknown.

11. It is clear from the record that the child has been with the applicant for some time now and the reports filed recommend adoption. The applicant is willing to adopt the child who has already settled and integrated well with her. The applicant has taken the minor as her own child. The child needs love and protection which the applicant is willing to offer on adoption. The child was given up for adoption because she was abandoned and documents from Kabete Police Station attest to this.

12. I have also perused the record and noted that the applicant is a responsible person who has taken in the child as her own. She has so far done well in integrating her in her family. During the hearing, the court observed the child and was satisfied that she appeared happy and quite at home with the applicant. She exhibited a high degree of ease and confidence with no sign of distress. She appeared happy throughout the session and moved around and about playing with the applicant and other children in court.

13. Regarding the applicants’ financial ability, the record, shows that she has financial means to take care of the child. Her family is also supportive of the adoption.

14. During the hearing, the proposed Legal Guardian, **ANN** Identity Card Number xxxx confirmed to court that she is aware of her obligations as legal guardian should she be appointed. Mr. Cosmas Karera Identity Card Number xxxx, Sub County Children’s officer, confirmed that he made the report after carrying out his investigations.

15. On the basis of what I have seen on record and heard from the applicant, the minor is a needy child who was abandoned by her biological mother immediately after birth. She needs parental care and protection so that she can grow up like any other child with emotional love which the applicant has promised to offer. I also note that the applicant meets the legal requirements for adoption under the Children Act. All reports are also in favour of adoption for the benefit and wellbeing of the child. Both the Constitution and the law require that in matters concerning a child, the best interests of the child should be paramount and should, therefore, come first.

16. In the circumstances, and given that the proposed Legal Guardian has confirmed that she is ready and willing to step in should the applicant be unable to discharge her parental responsibility to the child, I am satisfied that the application is for granting.

17. Consequently, the Originating Summons dated 15th July 2019 is allowed and I make the following orders;

a) An order is hereby made authorizing the applicant, MNN, to adopt Baby Dama

b) That the child be renamed SM.

c) That ANN is hereby appointed the Legal Guardian of the child in the event that the applicant dies, or is incapacitated by ill-health.

d) That Margaret MM, the Guardian Ad Litem, be and is hereby discharged.

e) That the Registrar General be and is hereby directed to make appropriate entries of this adoption into the Register of Adoptions and issue a certificate to that effect.

DATED, SIGNED AND DELIVERED AT KAJIADO THIS 24TH DAY OF SEPTEMBER, 2021.

E. C. MWITA

JUDGE