



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

ADOPTION CAUSE NO 27 OF 2019

IN THE MATTER OF THE ADOPTION OF

GJ (minor)

MJ.....APPLICANT

JUDGMENT

1. The applicant herein MC, brings this application under **Section 158(1) (b) of the Children Act** which states:

(1) An adoption order may be made upon the application of a sole applicant or jointly by two spouses where the applicant or at least one of the joint applicants—

(a)...; or

(b) is a relative of the child;

2. She is the first born in a family of nine while the subject whose date of birth is 18th August 2006, is the last born in the family.

3. The mother to the applicant and the subject died in 2017 in a road traffic accident. The subject was left in the care of her elderly father. The subject suffers from a chronic medical condition described as hemolytic anemia and bilateral leg ulcers which require constant care and attention which her elderly father was unable to do, despite the support from the applicant who lives and works in the Netherlands.

4. The applicant filed for adoption in 2019, but it would appear that by then the legal pre requisites to the adoption process had not been completed.

5. In the meantime, the child suffered such neglect that in February 2020 she was admitted to [Particulars Withheld] Mission Orphanage. Her father later approached Kenya Children's Homes Adoption Society and offered her for adoption. The child was declared free for adoption on 9th December 2020. Both herself and her father have consented to her adoption. All her siblings have also consented to the adoption vide an affidavit sworn on the 9th October 2021

6. The applicant seeks an adoption order so that she can take up the parental duties, responsibilities and rights over her minor sister. She has a partner with whom she has three children. Her partner has consented to be the minor's legal guardian.

7. In support of the Originating summons the applicant has annexed:

i. A copy of the identity card for their father;

ii. A Copy of the subject's certificate of birth;

iii. A copy of the certificate of death for their mother;

iv. Copies of treatment notes for the subject

v. Copy of her contract of employment and bank statements in Proof of financial stability

vi. Proof of clean criminal record here and in Netherlands

8. At the hearing of the application the applicant came through as the elder sister with so much love for her baby sister who wants to take care of her now that their mother is not there, but whose ability to do so is constrained by the requirements of the law. Her tears when she described the kind of suffering her kid sister was going through due to her medical condition and the fact that there was none at home willing to take care of her, yet she was ready able and willing to do so.

9. It is not unusual for a sister to take up the responsibility of raising her siblings in situations like this one where their mother dies leaving them with an elderly father. However, there are usually no permanent legal obligations attached to those relations and sometimes when the benefactors die those children who may still be in vulnerable situations lose their support, completely destabilizing their lives. Hence, the formalization of kinship adoptions is something that ought to be encouraged where it is clearly in the best interests of the child. This ensures stability for the child. In this case the young girl who still needs motherly love and care will get it from her sister.

10. Having carefully considered the material placed before me; the applicant has a clean medical and criminal record. She is prepared emotionally to take over the parenting of her sister. She is financially stable. She is in relationship where she has children with her partner who is ready to be the sister's legal guardian, that relationship appears to be stable and therefore suitable for the subject to transition into. For the foregoing reasons the applicant is fit and proper person to adopt the child under the Children Act.

11. Is it in the best interests of the child to be adopted by the applicant? In **Re Baby PSM [2020] eKLR**, the court observed that:

“The best interests of a child principle is the key consideration in determining the nature of any decision to be taken touching on the affairs of a child. This is a paramount requirement under Article 53(2) of the Constitution and Section 4(2) and (3) of the Children’s Act (see Re of Baby KR (2015) eKLR 2015. Similar position was held in the case of In Re CA and KA (both minors) (2014) eKLR where the court held that:-

“It is therefore not in doubt that when a court determines any question with respect to: - The upbringing of a child; or the administration of a child’s property or the application of any income arising from it, the child’s welfare shall be the court’s paramount consideration.”

In the instant case, the minor herein is a nephew to the applicants who is in need of support and provision of basic necessities like food, education, shelter, clothing and medical care among other provisions. The applicants have come in handy and at the hour of need. They and their children have fully bonded with the minor. They all understand the consequences of this adoption. It will be in the best interests of the child to be adopted by parents who are ready and willing to relieve the minor’s biological parents a huge burden off their shoulder otherwise, the boy’s bright future will be compromised if this application is rejected.”

12. In this case the subject is the sister to the applicant. She has been making provision even from a distance. The subject will be assured of a family, love, care and attention, medical care, security and education and therefore this application has been made in the best interests of the child. It goes without saying that it is in the best interests of the child herein that the adoption order be granted.

13. Consequently, the application be and is hereby allowed and the following orders issue:

(a) An order be and is hereby made authorizing the applicant MJ to Adopt GJ.

(a) That BS be and is hereby appointed the legal guardian of the child

(b) That AC, the guardian ad litem, be and is hereby discharged.

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

DATED, SIGNED AND DELIVERED VIA EMAIL THIS 27TH DAY OF DECEMBER, 2021.

MUMBUA T MATHEKA

JUDGE

COURT ASSISTANT: LEPIKAS

FOR THE APPLICANT M.G NTABO & COMPANY ADVOCATES