



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

FAMILY DIVISION

ADOPTION CAUSE NO. E015 OF 2020(O.S)

IN THE MATTER OF THE CHILDREN ACT, 2001

AND

IN THE MATTER OF BABY VM

IN THE MATTER OF AN APPLICATION FOR ADOPTION BY

CAO.....APPLICANT

JUDGMENT

1. The applicant CAO is aged 35 and runs an eatery. she and SW got married on 23rd September 2013 at St. [particulars withheld] Catholic Church in Nairobi and have a daughter. In originating summons dated 30th June 2020 they applied to adopt Baby V.M. While the matter was pending, SW died on 17th September 2020. This led to the applicant amending her summons to be the sole applicant.

2. Baby V.M. was estimated to have been born on 1st September 2017. The baby was on the 7th of May 2018 abandoned by the mother at [particulars withheld] at Eastleigh section III. The matter was reported to Shauri Moyo Police Station vide OB No. XXX2018. The baby was temporarily placed at House of Charity Children's Home on the 7th of May 2018. She was formally committed to the said institution by the Nairobi Children Court in **Protection and Care Case No. XXX of 2018** on the 22nd of August 2018. The final police letter dated the 5th of February 2019 indicated that all efforts to trace the mother or relatives of the child were not successful. On 3rd May 2019 the child was declared free for adoption and certificate No. 360 issued by Buckner Kenya Adoption Services. On 31st May 2019 the child was placed with the applicant for foster care. He has been with the applicant since.

3. On 27th May 2021 the court appointed Grace Vihenda Chagwaya as the guardian *ad litem* and ordered her and the Director of Children Services to separately carry out a social inquiry on the applicant to determine her suitability to adopt the child. The two reports were filed. Both recommended the applicant be allowed to adopt the child. The reports found that the applicant was socially, emotionally and financially stable and suitable to adopt the child. It was also found that the child had bonded well with the applicant.

4. Section 158(2) of the Children Act prohibits a female applicant from adopting a male child in the absence of special circumstances. I find that because the applicant was married when the application was first made and that the couple had a daughter, these constitute special circumstances and therefore the application will be allowed.

5. The court finds that it is in the best interest of the child to be adopted by the applicant. The applicant has demonstrated her capability to provide a conducive home and family environment in which the child will grow and develop. She will assume all parental rights and obligations of the biological parents of the child once adopted and shall treat him as if he was born to her. She has been made aware that once the adoption order is made, it shall be final and binding during the lifetime of the child. The child shall have the right to inherit her property. The applicant shall not be able to give up the child owing to any subsequent unforeseen behaviour or other changes in the child. The consent of the mother of the child is hereby dispensed with as she was found abandoned.

6. Having been satisfied that all the legal requirements for a local adoption under the **Children Act** have been met, the following orders shall issue:-

a. the applicant CAO is hereby allowed to adopt Baby V.M.;

b. Baby V.M. shall henceforth be known as GJW;

c. the child's date of birth shall be 1st September 2017, and shall be presumed a Kenyan citizen having born in Nairobi County in Kenya;

d. MKO and EA are hereby appointed as the child's legal guardians in the event of the death or incapacity of the applicant before he is of full age and fully self-reliant;

e. the Registrar-General is directed to enter this adoption in the Adopted Children Register; and

f. the guardian *ad litem* is hereby discharged.

DATED AND DELIVERED NAIROBI THIS 16TH DAY OF DECEMBER, 2021

A.O. MUCHELULE

JUDGE