



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

ADOPTION CAUSE NO. 3 OF 2020

IN THE MATTER OF APPLICATION FOR ADOPTION OF COJ, CHILD

JUDGMENT

1. The cause herein, has been filed by AAM, an adult female resident of Nairobi, within the Republic of Kenya, to be referred to hereafter as the applicant, seeking to adopt COJ, who is the biological child of her late sister, GJM, and NJO.

2. The child was born within wedlock, on 20th August 2008, and lived together with his parents as family, until his mother died on 14th October 2016, when the applicant took him in and started staying with him and his brother. They are currently residing within Nairobi, where he attends school.

3. The father of the children, NJO, is a resident in Nairobi. He acknowledges that the applicant has been taking care of the child since the demise of their mother, her sister, and he has consented to the proposed adoption, and understands that that would amount to giving up his parental rights over the child.

4. The applicant initially brought one cause for adoption of two children, that is to say Adoption Cause No. 7 of 2019. The said cause was heard by me on 22nd January 2020. When I settled to prepare the judgment, it dawned on me that the matter was not a consolidation of two adoption causes, but that the applicant had initiated one cause for adoption of two children. I thereafter delivered a ruling, on 30th April 2020, where I directed that the cases for the children be separated. Instead of opening just one more cause for one of the children, and retaining the old cause for the other, the registry opened two other separate causes, being Adoption Causes Nos. 2 and 3 of 2020. On 7th July 2020, I directed that the three causes be handled simultaneously, and proceeded to validate the proceedings, by way of full hearing of the matter, of 22nd January 2020. I did not consolidate the three causes since I had to deliver separate judgments in respect of the two children.

5. At the hearing of 22nd January 2020, the applicant submitted that the adoption was within the family, and prayed that the same be allowed, as it was in the best interests of the child. The guardian *ad litem*, in her report, and also in her address to the court, stated that the applicant was best suited to take care of the child. Similar sentiments were expressed by the Children Officer, in his report to the court. In his report, the guardian *ad litem* described the applicant as a well-educated caring woman, with a soft spot for children, who was capable of taking care of the subject child. He states that she is financially capable of meeting the needs of the child, and had been, in the period of three (3) years, that she has been living with the child, catering for all his needs.

6. The Children Officer report states that upon demise of the mother of the child he stayed with his father for some time, but ran away to the applicant's house as life was unbearable for him with his father. In an interview with the officer, the child, together with his brother, disclosed that their father was a drunkard, who could not provide for them, even in respect of their basic needs. They both stated that they wanted to stay with their aunt, the applicant, as she catered for all their needs.

7. Having considered the application herein, the affidavits in support and the oral statements made by the actors in the matter, at the hearing of the originating summons, and after considering the materials placed before the court by all of them, the issues for determination that have emerged are: whether the child herein was available for adoption; whether the applicant has met the requisite conditions for adoption; and whether the adoption was in the best interests of the child.

8. With respect to the first issue, I shall start by referring to section 156(1) of the Children's Act, Cap 144, Laws of Kenya, which provides as follows:

“(1) No arrangement shall be commenced for the adoption of a child unless the child is at least six weeks old and has been declared free for adoption by a registered adoption society in accordance with this rules prescribed in that behalf.”

9. Under Article 14(4) of the Constitution, 2010, a child found in Kenya, and who is, or appears to be, less than eight (8) years of age, and whose nationality and parentage are not known, should presumed to be Kenyan by birth. Besides, section 157(1) of the Children Act provides that any child, who is resident within Kenya, may be adopted, whether or not he is Kenyan citizen, or whether or not born in Kenya. The child herein is for all purposes and intents, constitutionally and statutorily, presumed to be a Kenyan citizen. Secondly, pursuant

to Section 156(1), the child herein is over the six (6) weeks minimum age requirement for a child sought to be adopted.

10. The child herein was declared free for adoption, under section 156(1) of the Children Act, on 1st November 2019, by Change Trust Adoption Society, vide their certificate number [...], and he is, therefore, available for adoption .

11. Regarding the applicant's suitability to adopt the child, she is a Kenyan citizen, born in 1977, making her forty-three (43) years old, which age properly falls within the age bracket of not less than twenty-five (25) years old and not more than sixty-five (65) years, in compliance with Section 158(1) of the Children Act. The applicant is in employment, and as demonstrated by her payslip, she has the financial capacity to cater for the child. She also is reported to have a clean criminal record, as reflected in the certificate of good conduct. She is medically, physically, mentally and emotionally fit.

12. It this is a kinship adoption. The applicant is related to the child, since the child's biological mother was her sister. On kinship adoptions, the court in *In re JNA* [2018] eKLR, said:

"According to the Guidelines for Alternative Family Care of Children in Kenya page 153,

"kinship adoption is adoption by adopters who are kin or relatives within the extended family of the child."

13. The biological father of the children is alive, and as regards consent from biological parents, as dictated by Section 158(4) of the Children's Act, he has consented to the adoption.

14. The material presented, through the three reports filed in court, leave no doubt that indeed the applicant is a suitable person to care for the children herein. It is, therefore, my holding that the applicant has met the requisite requirements for adopting the subject child.

15. As to whether the adoption of the child herein is in his best interests, I note that when the child was interviewed by the Children Officer, he stated that he was happy living with the applicant unlike with his father, who was a drunkard, and who was not able to cater for his needs. There is a letter on record by him and his brothers, where they express their consent for the adoption, stating that the applicant had been taking good care of them, since their mother's demise. The Children Officer, in his report, describes the child as healthy, and states that he appreciates the care and the protection given to him by the applicant. It should also be noted that the applicant has lived with the child for three years, she has since enrolled him in a good school, and intends to list him as a beneficiary in her employment records, such as the medical scheme, should the adoption succeed.

16. In *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."

19. 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 relief 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."

17. In the instant cause it is clear that the applicant has been taking good care of the child and has provided for his basic needs. The child is happy and seems to be contented with staying with the applicant. I find that it is in the best interests of the child that he is adopted by the applicant.

18. In the end, I make the following final orders of the originating summons dated 30th April 2020:

- a) That the applicant is hereby authorised to adopt COJ;**
- b) That the Registrar-General shall make the appropriate entry at the Adopted Children Register; and**
- c) That the guardian *ad litem* is hereby discharged.**

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 30th DAY OF July 2020

W MUSYOKA

JUDGE