



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 180 OF 2018 (O.S)

IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001

IN THE MATTER OF AN APPLICATION FOR ADOPTION OF BABY FB

BY

ABW (APPLICANT)

JUDGMENT

1. The Applicant ABW is a Kenyan citizen. The Applicant is currently single but was previously married to one JT with whom she has since separated. The Applicant has one biological child, MTW aged 35 years who is a medical doctor and lives in Morocco. She also previously fostered one WBT who is now aged 21 years and lives in Qatar.
2. The Applicant wishes to adopt the child known as Baby FB, a minor of the male sex through the Originating Summons dated 23rd November, 2018. From the pleadings, the court gathers that the Applicant is a Human Rights Lawyer with African Women Forum and is financially stable.
3. The child who is the subject of this adoption was rescued by Good Samaritans having been abandoned next to a riverbank within [particulars withheld] slums situated at Lang'ata Division on 11th May, 2004. The matter was reported to Lang'ata Police Station the next day vide OB NO. [Particulars withheld]. The child was referred to Mama Ngina Kenyatta Children's Home and later transferred to Missionaries of Charity Home, Huruma. The child was committed to the care of Missionaries of Charity Home on 17th August, 2005 through the Children's Court at Nairobi vide P&C Case No. 134/2005.
4. The police at Lang'ata Police Station confirmed vide a letter dated 12th May, 2004 and a final letter dated 22nd May, 2007 that no one had come forward to claim the child and efforts to locate its mother had proved futile. On 10th June, 2016 the Applicant took the child into foster care with a view of adopting. An Infant Release Form Agreement was signed by the Applicant on 10th June, 2016.
5. Prior to the hearing of the adoption application, Buckner Kenya Adoption Services prepared and filed a report dated 28th February, 2019. They had also issued a Certificate of serial no. [Particulars withheld] dated 1st November, 2013 declaring the child free for adoption. The guardian ad litem LPM prepared and filed a report dated 15th February, 2019 which was favourable and recommended the adoption of the child by the Applicant.
6. An officer from the office of the Director of Children's Services conducted home visits and established that the Applicant is financially and emotionally capable of providing for the up keep and education of the child. She filed a report dated 30th January, 2019 recommending the adoption for reasons that the child stands to gain from the opportunities provided by becoming the son of the Applicant as opposed to living all his life in an institution as an abandoned child.
7. The Children's officer noted that the Applicant has met all the legal requirements for a local adoption. She however pointed out that the Applicant is a sole female applicant and the child is of the male sex. She urged that special circumstances apply since the child has special medical needs which the Applicant is willing and has the capacity to take care of. That it is therefore in the best interest of the child to be adopted by the Applicant.
8. The child was in court during the hearing and appeared to have bonded well with the Applicant. He was vivacious and confident and regarded the Applicant as his mother. He is aged 15 years and currently in standard seven (7). He gave a brief testimony in court during which he stated his wish to be adopted by the Applicant and that he regarded her as his mother. The Applicant's family members are aware of the proposed adoption and support it. Her daughter MTW has consented to the adoption and supports it.
9. The Applicant, being a single female Applicant wishes to adopt a male child. Under **Section 158(2)** of the **Children Act No. 8 of 2001**, an

adoption order shall not be issued in favour of a sole female Applicant in respect of a male child unless the court is satisfied that there are special circumstances that justify the making of such adoption order.

10. The Adoption Committee established under **section 155(1)** of the **Children Act** issued guidelines on 13th January, 2010 in regard to circumstances that the court will take into account in determining whether the set of facts put forward by the Applicant fulfills the criteria of special circumstances.

11. In the case of a sole female applicant adopting a male child, the following are circumstances which may be considered as special:

- i. When the child is a relative.*
- ii. When the child has special needs and the applicant is willing and has capacity to take care of the child.
- iii. Where the applicant has adopted or has another biological child or children over whom she is willingly exercising parental responsibility.
- iv. Where the child to be adopted has a sibling who is also being adopted by the applicant.
- v. Proposed applicant is the only person available to adopt the child.
- vi. Where the applicant is the legal guardian of the child or children appointed by will or in adoption proceedings and the parents die or become permanently incapacitated.

In the present case, the child has special needs and the Applicant is willing and has the capacity to take care of the child. The Applicant also has a biological child who is now aged 35 years and a foster child aged 21 years both of whom she raised.

12. The Applicant has appointed her brother PW and his wife PW to be the legal guardians of the child and both parties have consented to be appointed as such. The consent of the child's biological parents was dispensed with since the child was abandoned at infancy and the parents could not be traced to give the consent.

13. It is important to note that the orders sought by the Applicant herein relate to a child. In any matter concerning a child the best interests of a child are what is of paramount importance as provided for under **Article 53(2)** of the **Constitution** and **section 4(3)** of the **Children Act No. 8 of 2001**.

14. After a careful assessment of the reports filed herein and from the observation of the interaction of the Applicant and the child during the hearing, this court has formed the opinion that it would be in the best interest of the child to be adopted by the Applicant. Not only does the child gain a loving mother, he also gains siblings.

15. Reasons wherefore I allow the prayers sought in the Originating Summons dated 23rd November, 2018 and order as follows:

- i. The Applicant, ABW is hereby allowed to adopt **Baby FB** who shall henceforth be known as **FB**.
- ii. His date of birth shall be presumed to be 2nd February, 2004. He is presumed to have been born in Kenya in accordance with **Article 14(4)** of the **Constitution**, and the place of birth shall be Nairobi.
- iii. PW and PW, are hereby appointed legal guardians of the child in the event that the Applicant dies, or is incapacitated by ill-health.
- iv. The Registrar General is directed to enter this Order in the Adoption Register.
- v. The Director of Immigration is hereby authorised to issue the child with a Kenyan passport.
- vi. The guardian ad litem is hereby discharged.

It is so ordered.

SIGNED DATED and DELIVERED in open court this **28th** day of **March, 2019**.

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L. A. ACHODE

HIGH COURT JUDGE