



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**MILIMANI LAW COURTS**

**FAMILY DIVISION**

**ADOPTION CAUSE NO. 199 OF 2013**

**IN THE MATTER OF CHILDREN'S ACT, 2001**

**AND**

**IN THE MATTER OF ADOPTION OF CHILD BW**

**BY**

**ASM.....APPLICANT**

**JUDGMENT**

1. The applicant is a single female applicant of 49 years of age seeking to adopt a male child. She was married in 1994. Her husband passed away in 2004. She is a house keeper at [Particulars Withheld]. She filed an originating summons on 6<sup>th</sup> September 2013 seeking to be allowed to adopt the male child.

2. Child BW was presumed to have been born on 10<sup>th</sup> April 2009 and abandoned in Nakuru in the hands of strangers whom the mother had requested to hold the minor as she gets her luggage from the vehicle. The matter was reported at Nakuru Police Station vide Occurrence Book Number 82/9/12/2011. He was admitted at the African Gospel Church Baby Centre in Nakuru. The child was committed at the Centre for Care and Protection on 6<sup>th</sup> February 2012 by the Nakuru Children's Court vide Protection and Care Cause No.118 of 2012. The child was declared free for adoption under **section 156(1)** of the **Children's Act** by the Kenya Children's Homes Adoption Society's on 18<sup>th</sup> September 2012 under Freeing Certificate Serial Number [xxxx] and was on 1<sup>st</sup> February 2013 placed under the care of the applicant for mandatory bonding prior to adoption. He has been under the continuous care of the applicant since. Police efforts to trace the parents or relatives of the child had been unsuccessful.

3. The court on 13<sup>th</sup> June 2014 appointed LKM as guardian *ad litem* and ordered that she files a report after carrying out a social inquiry on the applicant. A similar report was sought from the Director of Children Services. Both reports were duly filed. They both recommended the adoption.

4. The matter was heard and a ruling delivered on 6<sup>th</sup> June 2019 where the court held that the application did not put forward exceptional circumstances to allow the adoption by a single applicant of a child of the opposite gender. Further, the guardian *ad litem* had not filed her report.

5. It is noted that the child is male and the applicant is female. **Section 158 (2) (b) Children's Act** does not allow a sole female adult to adopt a male child unless there are exceptional circumstances to justify the making of the order. Although the **Act** does not specifically list the envisioned exceptional circumstances, the National Adoption Committee issued guidelines on 13<sup>th</sup> January 2010 specifying circumstances that may warrant adoption of a child of the opposite gender by female applicant. Among the exceptions in relation to a sole female applicant wishing to adopt a male child are:

**1. When the child is a relative;**

**2. When the child has special needs and the applicant is willing and has capacity to take care of the child;**

**3. Where the applicant has adopted or has another biological child or children over whom she is willingly exercising parental responsibility;**

**4. Where the child to be adopted has a sibling who is also being adopted by the applicant;**

**5. Where the Proposed applicant is the only person available to adopt the child; and**

**6. 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.**

6. The reports by the guardian *ad litem* and the Director of Children Services show that the applicant sought to expand her family by this adoption. She had earlier on adopted a girl child. This adoption was done on 17<sup>th</sup> September 2004. The adopted girl is B.K. I am satisfied that this meets the exceptional circumstances under **section 158(2)(b)** of the **Act**.

7. The applicant was interrogated and 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.

8. The court finds that it is in the best interests of the child to be adopted by the applicant. The applicant has demonstrated her ability 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 borne to her. This court dispenses with the consent of the child's biological parents as the child was found abandoned.

9. 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 ASM is hereby allowed to adopt Child BW;

b. child BW shall henceforth be known as AMM;

c. the child's date of birth shall be 10<sup>th</sup> April 2009, shall be presumed to be a Kenyan by birth having been found abandoned at a bus stage in Nakuru in Kenya;

d. JNM is hereby appointed to be the child's legal guardians in the event of 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 at NAIROBI this 29<sup>TH</sup> day of JULY 2019.**

**A.O. MUCHELULE**

**JUDGE**