



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

ADOPTION CAUSE NO. 184 OF 2018

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

IN THE MATTER OF AN APPLICATION FOR ADOPTION OF BABY MM ALIAS MG

BY

MMM (APPLICANT)

JUDGMENT

1. The Applicant MMM is a Kenyan citizen. She is single and has never been married. She has no biological child of her own, but has an adopted daughter NGM, whom she adopted by an order of the court made on 14th June, 2016.
2. The Applicant wishes to adopt the child known as MM aka MGM, a minor of the male sex through the Originating Summons dated 26th November, 2018. The Applicant works with [particulars withheld] as a Regional Director for Africa and is financially stable. She resides in a three-bedroom house in [particulars withheld] Court in Kilimani area Nairobi, and professes the Christian faith.
3. Records before the court indicate that the minor in this matter was abandoned by his mother who absconded shortly after giving birth at [particulars withheld] Medical Centre on 28th March, 2017. A member of staff from [particulars withheld] Medical Centre reported the abandonment to Mwiki Police Station where it was booked vide OB No. 27/1/X/2017. In a letter dated 2nd April, 2017 Mwiki Police Station confirmed that the child was abandoned by the mother soon after delivery and referred the child to the Nest Children's Home for temporary care and protection pending investigations.
4. On 19th April, 2017 the child was committed to the care of Nest Children's Home for a period of three (3) years by the Children's Court at Nairobi vide P&C Case No. 140 of 2017. The final police letter issued by Mwiki Police Station dated 9th November, 2017 indicates that no one had come forward to claim the child and attempts to trace his kin had proved futile. On 22nd March, 2018 the Applicant took the child into foster care with a view of adopting upon signing a Child Release Agreement dated 22nd March, 2018. Since then, the child has been in the continuous care and custody of the Applicant.
5. Prior to the hearing of the adoption application, Little Angels Network prepared and filed a report dated 2nd February, 2018. They had also issued a Certificate of Serial No. xxxxxxx dated 2nd February, 2018 declaring the child free for adoption. The guardian ad litem JWM filed a report dated 20th March, 2019 which was favorable and recommended the adoption of the child by the Applicant.
6. An officer from the office of the Director of Children Services conducted home visits and established that the Applicant is financially and emotionally capable of providing for the upkeep and education of the child. She filed a report on 30th May, 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 Officer observed that the Applicant is aged 46 years and has adopted a baby girl who is aged about 4 years. He asserted that whereas the Applicant is seeking to solely adopt a male child, **section 158(2)** of the **Children Act No. 8 of 2001** allows the court to make an adoption order in respect of a sole female applicant where there are special circumstances. He noted that in the instant case, special circumstances exist since the Applicant has adopted another child over whom she exercises parental care. He urged that the best interest of the child is paramount and should be the primary consideration in determining this adoption application.
8. The child was in court during the hearing and appeared to have bonded well with the Applicant. He was observed to be in good health and in good spirits and had flourished under the care of the Applicant. The Applicant's family members are aware of the proposed adoption and support it.

9. The Applicant, being a single female Applicant wishes to adopt a male child. Under **section 158(2)** of the **Children Act**, 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 an 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 Applicant has an adopted child over whom she is willingly exercising parental responsibility. The evidence on record demonstrates that the adopted child has flourished under the care of the Applicant.

12. The Applicant has appointed her siblings MKM and ANM as 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 birth and the parents could not be traced to give 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 the 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 the added advantage of a sibling.

15. Reasons wherefore I allow the prayers sought in the Originating Summons dated 26th November, 2018 and order as follows:

- i. The Applicant, MMM is hereby allowed to adopt **Baby MM aka MGM** who shall henceforth be known as **MGM**.*
- ii. His date of birth shall be 28th March, 2017, and the place of birth shall be Nairobi.*
- iii. MKM and ANM 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 26th day of September, 2019.

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L. A. ACHODE

HIGH COURT JUDGE