



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 172 OF 2017 (O.S)

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

IN THE MATTER OF AN APPLICATION FOR ADOPTION OF BABY GA

BY

MSM (APPLICANT)

JUDGMENT

1. The Applicant MSM is a Kenyan citizen. She is single and has never been married and has no biological child of her own. She is open to marriage and is currently in a relationship. Her partner is supportive of her decision to adopt a child.
2. The Applicant wishes to adopt the child known as GA, a minor of the female sex through the Originating Summons dated 1st September, 2017. The pleadings indicate that the Applicant is a Teacher by profession currently working at [particulars withheld] Primary School and is financially stable.
3. Records indicate that the minor in this matter was given up for adoption by her biological mother NAO a few days after her birth. The biological mother approached KKPI Adoption Society on 12th August, 2015 with the intention of giving the child up for adoption. She was accompanied by her sister-in-law MAO. A social worker at the KKPI Adoption Society explained to the biological mother the implications of her decision and took her through the "Adoption of Children - Explanatory Memorandum for Biological Parent/ Guardian". A certificate of acknowledgment of the Explanatory Memorandum is annexed to the application.
4. The biological mother signed an initial consent on 12th August, 2015 indicating that she was giving her child up for adoption because of the manner in which the child was conceived. The child was admitted to Nest Children's Home on 12th August, 2015 for care and protection and committed to the home on 11th November, 2015 by the Children's Court at Nairobi vide P&C Case No. 254 of 2015. The biological mother then swore a formal statutory Consent to an Adoption order in respect of an infant on 18th May, 2016. On 13th August, 2016 the Applicant took the child into foster care with a view of adopting upon signing an Infant/Child Release Agreement dated 13th August, 2016.
5. Prior to the hearing of the adoption application, KKPI Adoption Society prepared and filed a report dated 21st February, 2018. They had also issued a Certificate of Serial No. 503 dated 27th July, 2017 declaring the child free for adoption. The guardian ad litem JAA prepared and filed a report dated 24th January, 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 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 prepared and filed a report dated 25th October, 2018 stating that under the circumstances, alternative family care is the best option to further and advance the best interest of the child. She noted that the child stands to gain from the opportunities provided by becoming the daughter of the Applicant and that the Applicant has met all the requirements in the statute. Further that the child has flourished under the care of the prospective adoptive parent.
7. The Children's Officer stated that she had a telephone conversation with the child's biological mother who maintained that she willingly gave out her child. She however noted that efforts to access the biological mother had been futile as she had declined a request to visit their offices to confirm.
8. When the matter came up for hearing and for abundance of caution, the Court directed the Director Children Services to trace the biological mother of the child and conduct an independent investigation. This was done resulting in the recommendation in the supplementary report dated 27th November, 2019 and filed on 28th November, 2019. The Children's Officer noted that the biological mother stands by the consent she gave concerning giving up the child and understands the consequences of so doing.
9. This is a local adoption and from the record the Applicant has fulfilled all the legal requirements relating to the adoption of the child. The

consent of the child's biological father was dispensed with since his whereabouts and identity are unknown. The child was in court during the hearing and appeared to have bonded well with the Applicant. The Applicants' family members are said to be aware of the proposed adoption and support it.

10. RMM, a sister to the Applicant, has by a letter dated 4th April, 2015 consented to be appointed the legal guardian in the event that the Applicant is incapacitated and cannot care for the child.

11. Since the orders sought by the Applicant herein relate to a child, the best interests of the child must take center stage being 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**.

12. 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.

13. In the premise, I allow the prayers sought in the Originating Summons dated 1st September, 2017 and order as follows:

- i. The Applicant MSM is hereby allowed to adopt the child known as **Baby GA** who shall henceforth be known as **GM**.
- ii. Her date of birth is 6th August, 2015. She was born in Kenya and the place of birth shall be Nairobi.
- iii. RMM is hereby appointed as the legal guardian 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 18th day of December, 2019.

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L. A. ACHODE

HIGH COURT JUDGE