



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 133 OF 2017 (O.S)

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

IN THE MATTER OF ADOPTION OF BABY J

BY

M N G (APPLICANT)

JUDGMENT

1. The Applicant M N G is a Kenyan citizen. She is single and has one child namely P I L aged six years an adopted child from New Life Home Trust in Kilimani. She wishes to adopt the child known as Baby J a minor of the male sex through the Originating Summons dated 11th September, 2017. The Applicant indicates that she is a business lady. She resides in Nairobi at Langata Estate.
2. The child who is the subject of this adoption was found by a Good Samaritan having been abandoned around Central Park on 16th May, 2015. The matter was reported at Kamkunji Police Station, via OB NO. [particulars withheld]. On the 23rd September, 2015 the baby was committed to the care of the Happy Life Children's home through the children's court at Nairobi vide P&C Case No. 219/2015.
3. On 20th August, 2016 the child was discharged from Happy Life Children's Home and placed in the care of the Applicant with a view for adoption. The Applicant also signed a Foster Care Agreement dated the same day. Since then the child has been in the continuous custody and care of the Applicant.
4. Prior to the hearing of the adoption application, Buckner Kenya Adoption Services, an adoption society prepared and filed a report in court. They also issued a certificate No. [particulars withheld] dated 12th August, 2016 declaring the child free for adoption. The guardian ad litem J M K filed a report which was favourable and recommended the adoption of the child by the Applicant.
5. The Director of Children's Services has also made 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 20th March, 2018 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.
6. The child was in court during the hearing and appeared to have bonded well with the Applicant. He was jovial and clearly seemed to trust the Applicant. He regarded her as his parent. The Applicant's family members are aware of the proposed adoption and support it.
7. 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.
8. 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.
9. 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 had previously adopted another child over whom she is willingly exercising parental responsibility.

10. Of importance is that, the orders sought by the Applicant relate to a child. In law, in any matter concerning a child, the best interests of a child are paramount. **Article 53 (2)** of the **Constitution** provides the guiding principle on this question as follows:

“A child’s best interests are of paramount importance in every matter concerning the child.”

The other pertinent law is the **Children Act No. 8 of 2001** and in particular Section 4(3) thereof.

11. 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.

12. Reasons wherefore I allow the prayers sought in the Originating Summons dated 11th September, 2018 and orders as follows:

i. The Applicant, M N G is hereby allowed to adopt **Baby J** who shall henceforth be known as **J T A**.

ii. His date of birth shall be presumed to be 16th May, 2015. He is presumed to have been born in Kenya and the place of birth shall be Nairobi.

iii. Ms. M M (younger sister to the Appellant), is hereby appointed 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 **26th** day of **July 2018**

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L.A ACHODE

JUDGE