



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ADOPTION CAUSE NO. 72 OF 2017
IN THE MATTER OF THE CHILDREN ACT NO. 8 OF 2001
AND
IN THE MATTER OF BABY V M
BY
C N N (APPLICANT)
JUDGMENT

1. The Applicant herein came to court vide an Originating Summons dated 8th May, 2017 and filed on 11th May, 2017 seeking the following orders:

1. That Z K of P. O. Box Number [Particulars Withheld]-00515 Nairobi be appointed *Guardian ad litem*.
2. That the Director Children's Department, Ministry of Labour, Social Security and Services investigate the Applicant's fitness to adopt and file a report.
3. That the Applicant be authorized to adopt Baby V M henceforth to be known as N N N.
4. That the child be presumed to be a Kenyan citizen by birth.
5. That the child's date of birth be 17th January, 2015 and the place of birth be Meru.
6. That the Registrar General be directed to enter the adoption in the Adopted Children Register.
7. That the Director Immigration be authorized to issue the child with a Kenyan passport.
8. That S N K be appointed the legal guardian of the child in the event of the death or incapacity of the Applicant before the child is of age or independent.
9. That the consent of the Applicant's spouse be dispensed with.

2. The application is premised on the grounds set out on the face of it and an annexed statement dated 8th May 2017 and affidavit of the Applicant together with the annexures thereto sworn on the same day.

3. The Applicant is a Kenyan citizen born on 10th January, 1981. She was previously married but is currently separated with no chance of reconciliation. She is a social worker and administrator at [Particulars Withheld] trust Foundation, children home. She expressed her wish to adopt the child as a single Applicant in order to raise the child as her own having lost her two children at birth.

4. From the record, the child is said to have been born on 17th January, 2015 at Meru Hospital. The child's biological mother is mentally challenged and therefore unable to care for the child. Efforts to place the child within the extended family failed prompting the Children's officer to approach Neema House Nanyuki to care for the child.

5. On 29th April, 2015 the child was admitted to Neema House for care and protection. CHANGE Trust Adoption Agency administered the consent which was signed by S K, the maternal uncle of the child's biological mother. Later on the 25th August, 2015 the Children's Court in

Meru committed the baby to the care and protection of Neema House in protection and care case no. 15 of 2015.

6. Prior to the hearing of the adoption application, the CHANGE Trust Adoption Agency prepared and filed a report on 21st June, 2017. They had also issued a certificate of serial no. 00149 on 12th August, 2016 declaring the child free for adoption. The *guardian ad litem*, E B M, filed her report on 28th May, 2018 in which she recommended the adoption of the child by the Applicant. She stated that the Applicant is capable of meeting the child's physical, emotional and psychological and financial needs.

7. An officer from the office of the Director Children's Services conducted a home visit and established that the Applicant is fit to take over parental responsibility of the child. The officer filed a report dated 12th October, 2017 recommending the adoption for reasons that the Applicant is financially and emotionally capable of caring for the child and that she has met all the legal requirements as provided in the **Children Act**.

8. On 3rd September, 2016 the Applicant took the child into foster care with a view of adopting her having received approval from Neema House Infant Rescue Centre. A foster care agreement was subsequently signed on 3rd September, 2016.

9. The reports as filed demonstrate that the Applicant has no criminal record and understands the consequences of the adoption.

10. This is a local adoption and the record shows that the Applicant has fulfilled the necessary legal requirements. From the record, the child herein is a Kenyan citizen resident in Kenya and is aged three (3) years. The Applicant has fulfilled the age requirements as she is aged 31 years having been born on 10th January, 1981. She is therefore at least 21 years older than the child but has not attained the age of 65 years as provided in **section 158** of the **Children Act**.

11. The consent of the Applicant's spouse was dispensed with since the Applicant and her husband are separated and the separation is likely to be permanent. The power of the court to dispense with consent in such circumstances is underpinned under **section 159(2)** of the **Children Act**.

12. Of importance is that in any matter concerning a child, the best interests of the child is of paramount importance as stipulated under **Article 53(2)** of the **Constitution** and **section 4(3)** of the **Children Act**. The adoptive mother has fully bonded with the baby as demonstrated in court with the baby closely held by the Applicant. The baby is assured of generational identity, inheritance and above all, provision of basic necessities like food, shelter, clothing, Education, and med.care.

13. Accordingly, in order to ensure the realization of the best interest of the child, the Originating Summons dated 8th May, 2017 is allowed in the following terms:

- a) That C N N be and is hereby authorized to adopt Baby V M who shall henceforth be known as N N N.
- b) That the child's date of birth shall be 17th January, 2015 and place of birth Meru County in Kenya.
- c) The Director of Immigration be and is hereby authorised to issue the child with a Kenyan passport.
- d) That S N K (the Applicant's mother) be and is hereby appointed as the legal guardian of the child in the event that the Applicant dies, or is incapacitated by ill-health before the child is of age or independent.
- e) That the Registrar General be and is hereby directed to enter this adoption into the Register of Adoptions.
- f) That the guardian ad litem be and is hereby discharged.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28th DAY OF SEPTEMBER 2018

J.N.ONYIEGO

JUDGE