



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 61 OF 2017

IN THE MATTER OF THE CHILDREN'S ACT 2001

AND

IN THE MATTER OF AN APPLICATION FOR ADOPTION BY N K

AND

IN THE MATTER OF ADOPTION OF M.O. (MINOR)

JUDGMENT

1. This is an application for local adoption. The Applicant herein is an adult female Kenyan citizen who is single and has no biological child or children of her own. For purposes of these proceedings, I will refer to her as the Applicant or prospective adoptive parent.
2. The application was brought by way of Originating Summons dated 26th April 2017 pursuant to sections 154 and 158 of the Children Act cap141 laws of Kenya. The summons is supported by the *statement* and *verifying affidavit* of the Applicant together with a bundle of materials filed on 28th April 2017. There is also an *original* report filed by the *Director of Children Services* on 4th December 2017; and, a further report by the *Guardian ad Litem* filed on 9th January 2018.
3. The minor is a boy now aged five years old and whose estimated date of birth is given as 26th December 2013. The baby was found abandoned in Kakamega County by a Good Samaritan. The matter was then reported to Kakamega Police station vide O. B No. [Particulars Withheld]. Subsequently, he was placed at Devine providence Children's Home on 22nd June 2015 pending further investigations. Every effort to trace the biological parents or relatives has been futile. The minor was committed to the home through the Kakamega Children's Court p and c Number [particulars withheld] of 2015. He was later declared free for adoption through the Kenya Children's Home Adoption Agency on 5th October 2016.
4. The minor was placed with the Applicant on 26th December 2016 for a mandatory three months care and control period. A report filed on 9th January 2018 by the Guardian ad Litem revealed that the said minor has settled and fully bonded with the Applicant since placement to date.
5. On 27th July 2017, S N was appointed as Guardian ad item and the director children services directed to file an assessment and evaluation report within 45 days.
6. During the hearing, the Applicant confirmed on oath that she understood the finality and legal implications of an adoption order. She is a Kenyan citizen by birth and residing in Kilimani, Nairobi County. She is self employed as a tailor and is able to comfortably provide for the financial and emotional needs of the said minor.
7. The prospective parent has confirmed that she understands the nature of an adoption order; that she will treat the minor like her child; and, that the adopted child will inherit her property in the same manner as her biological child.
8. Section 154 of the Children Act vests the High Court with power to make adoption orders. I find that it is in the best interests of the minor that she be adopted by the Applicant. The Applicant has demonstrated her bona fides to be a good parent. I am satisfied that she has the emotional and financial capacity to raise the child.
9. I am however cognizant of the fact that the subject herein is a male child and the Applicant is a female now aged 55yrs old. Section 158(2) (b) of the Children's Act does not allow adoption arrangements of that nature unless the court is satisfied that it would be in the best interests of the child. Before making any decision affecting the affairs of a child, a court or any other institution shall take into consideration the best interests of the child (**see Article 53(2)**). The baby herein was abandoned by the mother on the roadside. According to the police

investigations, nobody has laid claim over the baby. To that extent, consent is dispensed with pursuant to section 159(1) of the Children Act.

10. It is my conviction that the adoptive parent having taken care of the baby for over five years now, they have fully integrated as mother and son. The child has nowhere to go. He has neither home elsewhere nor relative. It is in his best interest that he be adopted by the Applicant whom stake holders among them the director children services have recommended as morally, mentally, physically, emotionally and financially stable. From the circumstances of this case, this is an exceptional case a court can exercise its inherent discretion to allow a female adoptive parent to adopt a male child.

11. Upon the grant of the adoption order, the Applicant shall assume all parental rights and duties of the biological parent. She shall treat the adopted child as her own. The adoption order is final and shall be binding during the lifetime of the child; and, the adopted child shall have the right to inherit the property of the Applicant. The Applicant cannot give up the child owing to unforeseen behavior or other changes in her character.

12. In the end, I am satisfied that the legal requirements for a local adoption have been met. I therefore grant the following orders-

(a) That the applicant be and is hereby allowed to adopt baby M. O.

(b) That the child shall henceforth be known as I M N.

(c) That the effective date of birth shall be 23rd December 2013 and place of birth [Particulars Withheld]Kakamega County Kenya.

(d) That the child is presumed to be a Kenyan Citizen.

(e) That the Registrar General is directed to enter this adoption order in the Adoption Register.

(f) That N M M and J M M be and are hereby appointed as the minor's legal guardians in the event that the Applicant is incapacitated or, unable to exercise parental obligations.

(g) That the proceedings and judgment in this cause shall be sealed; and, shall not be accessible to any person without prior orders of the court.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS DAY OF 27TH SEPTEMBER, 2018

J.N. ONYIEGO

JUDGE