



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

AT MILIMANI FAMILY DIVISION

ADOPTION CAUSE NO. 76 OF 2017

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

AND

IN THE MATTER OF AN APPLICATION FOR THE ADOPTION OF

BABY G S (MINOR)

BY

J W K.....APPLICANT

JUDGMENT

1. The applicant herein JWK has come to court through an Originating Summons dated 19th May 2017 and filed on 23rd May 2017 seeking orders as follows:

- (1) That the consent of the biological parents of G S be dispensed with since the child was abandoned after birth.**
- (2) That the applicant herein be authorized to adopt baby GS and the child be called F W M.**
- (3) That the court be pleased to appoint J K M and Z K M as legal guardians to F W M upon granting the adoption order.**
- (4) That the Registrar General be ordered to make the appropriate entries in the adopted children's register in respect of FWM.**
- (5) That F W M be considered as a Kenyan citizen.**
- (6) Costs of this application be in the cause.**

2. The application is supported by a statement dated 19th May 2017, an affidavit sworn by the applicant on the same day plus a bundle of documents. The applicant herein aged 55 years old is a Kenyan citizen and a widow who got married the year 1990. Unfortunately, her husband Stephen Mbugua died 2014 before getting a child of their own.

3. Due to her desire to have a child of her own, and the love for the children, the applicant adopted her first child A N M G on 24th November 2014 at Nairobi High Court. The motivation to adopt the baby herein is to have a baby girl to join the first adopted child (son) as a sibling and the urge to provide for a needy child.

4. The baby who is the subject of these proceedings presumed to have been born on 2nd February 2015, was found abandoned at [particulars withheld] Tea Estate on 15th February 2015. The baby was rescued by a police officer on patrol and taken to Olenguruone Sub-District Hospital for check up. The matter was reported at Kiptagich Police Station vide OB No. [particulars withheld]. Thereafter she was handed over to the custody of African Gospel Church baby Centre as a child in need of care and protection.

5. On 14th April 2015, the baby was formally committed to African hospital church baby centre by the Children's Court vide protection and care case No. 43/2015. According to the police final letter dated 5th December 2016, their effort to trace the mother or any relatives was in

vain. Subsequently, the baby was declared free for adoption by Kenya Children's Home Adoption Society on 14th December 2016 and certificate S/No. [particulars withheld] issued the same day.

6. The child was placed under the foster care and control of the applicant for a mandatory 3 months period pending this application pursuant to Section 157(1) of the Children's Act on 16th December 2016. Since then the child has been under her care and protection.

7. Through a Chamber Summons dated 19th May 2017, the court appointed M K K as guardian ad litem on 5th February 2018. The Director Children Services was authorized to file a statement and evaluation report within 45 days.

8. Consequently, on 27th June 2017, the Kenya Children's Home and the guardian ad litem filed their respective assessment and evaluation reports. The Director Children Services also filed his report on 17th May 2018 recommending the adoption. Both reports described the applicant as mentally and physically fit, a responsible person, a Christian with no criminal record and a successful business lady staying in her own house.

9. During the hearing, the applicant urged the court to grant her the opportunity to adopt the baby. She appeared responsible and seemed to understand the obligations and consequences of the adoption.

10. I have considered the application herein, affidavit in support and materials placed before the court. There is no dispute that the child was found having been abandoned in a tea estate within [particulars withheld] area from where a police officer on patrol rescued her. According to the police final letter dated 5th December 2016, nobody has showed up to claim the baby and their effort to trace the mother or any other relative has been futile. Accordingly, the requirement for consent under Section 159 (1) of the Children's Act is not necessary hence dispensed with.

11. Under Article 14 (4) of the Constitution, any child below 8 years found in Kenya whose parents or nationality is not known is presumed to be a Kenyan. Section 156 (1) of the Children's Act requires that for a child to be adopted the same must not be less than six weeks old. It is my holding that, the child herein is presumed to be a Kenyan who is aged about 3 years now hence meets the criteria to be adopted.

12. Regarding the adoptive parent, she is a Kenyan aged 55 years old. In terms of age, she is qualified as her age falls within the age bracket of not less than 25 years and not more than 65 years pursuant to Section 158 (1) of the Children's Act. In the circumstances, the adoption herein is qualified to be classified as a local adoption.

13. The applicant is a business lady who is financially stable with rental houses. She is staying in her own 3 bedroomed house within Riruta Estate. She is the manager of their commercial property generating an income of 250,000/= per month.

14. Upon examination by the court, she appeared to be a responsible parent who understands her parental obligations and the consequences of adoption. With the first adoption in place, she has demonstrated sufficient experience in parenting. I find that she has met all legal requirements to adopt the baby.

15. The key question is whether the adoption herein is in the best interests of the child. Underpinning the best interests of a child principle is Article 53 (2) of the Constitution and Section 4 (2) and (3) of the Children's Act. The court is therefore duty bound to consider that requirement before allowing the application.

16. The baby herein was abandoned in a tea farm. She has no known parent or relative. She needs the basic necessities like food, shelter, education, clothing, mentorship and parental love. She also needs generational identity and something to inherit. The applicant herein is financially stable. She has fully integrated with the baby. The child needs emotional, psychological and parental guidance all of which are readily available in the hands of the applicant. It is my finding that it is in the best interests of the baby that the application be allowed.

17. In view of the above holding, the Originating Summons is allowed with orders as follows:

(a) That the applicant is hereby allowed to adopt baby GS who henceforth shall be known as F W M.

(b) That the baby's date of birth shall be 2nd February 2015 and place of birth Kiptagich

(c) That the baby is presumed to be a Kenyan.

(d) That the Registrar General shall enter the adoption in the adopted children register.

(e) That the consent of biological parents is dispensed with.

(f) That the guardian ad litem herein is hereby discharged.

(g) That Z M K and J K M be appointed as legal guardians to the baby in the event of death or any eventuality befalling the applicants.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 19TH DAY OF DECEMBER, 2018.

J.N. ONYIEGO

(JUDGE)