



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAJIADO
ADOPTION CAUSE NO. 2 OF 2016
IN THE MATTER OF ADOPTION BY N M M FOR AN ORDER OF ADOPTION
IN THE MATTER OF D.M. HEREIN REFERRED AS THE MINOR
AND
N M M.....AS THE APPLICANT

RULING

The applicant N M M by an originating summons dated 13/12/2016 applied to seek an adoption order in respect of the minor D.M. who was born on 31/3/2000.

Factual Matrix:

The issue before the court can be summarized as follows:

The minor (D.M) was born and raised up by his late mother N W M as a single parent. The only known parent N W M passed away on 24/6/2010 leaving the care of her two children L.W. and D.M. to the applicant. The birth parent of the deceased who is also the grandmother to the minor assumed parental responsibilities following the demise of her daughter N W M.

The applicant further deposes that during the life time of her deceased daughter, and mother to the minor D.M, they never came to know the real biological father. The alleged father has remained unknown during the life of her daughter and after her death on 24/6/2010. In view of the prevailing circumstances the family took the position that the child best interest would be served by the placement with the grandmother who is the applicant in this cause. In this arrangement the siblings to the deceased namely D N M, G W M and B W M consented to their mother's application to assume parental responsibility of D.M in an affidavit dated 16/12/2016.

For the purposes of considering the application, I received a confidential report from B W M – Guardian Ad Litem filed in court on 15/3/2017. The Guardian Ad Litem statement was helpful in giving a detailed profile of the applicant, character, parental fitness and the level of preparedness to take care of the minor. In the same application a request from the Director of Children Services Kajiado County provided a full assessment of the applicant in a report filed in court on 15/9/2017. The Director of Children Services recommended that it is in the best interest of D.M that he should be placed with his grandmother. In the report a detailed position statement setting out the social-economic framework by which she contemplates this outcome of kinship adoption could be achieved. The significance of it all is to assume the care and protection of the child as provided for under the Children's Act of Kenya.

The Child Welfare Society of Kenya, a gazetted adoption agency did file and serve further representations on the issued before court dated 2/5/2017. The agency has proceeded on the footing that there is no one within the extended natural family best suited to care for D.M in the short term or long term save for the applicant. In their recommendation the minor would remain within his birth family. The agency further submits that the current placement is well founded under the provisions of Article 8 of the United Nations Convention of the rights of the child and section 158(1) of the Children Act 2001. The gist of the two provisions ***“is the ability and willingness of any of the child’s relatives, or of any such person, to provide the child with a secure environment in which the child can develop, and otherwise to meet the child needs.”***

During the hearing the minor child, D.M was interrogated and did recognize and consent to the adoption order in his favour.

Determination:

I have considered the application, the guardian position, the adoption agency report. The Director of Children’s Kajiado County observations and the family recommendations. In exercising discretion in relation to this adoption of D.M I am guided by the constitution, the international conventions in the rights of the child and the Children’s Act 2001. The provisions of Article 53 of our constitution are clear on the rights of the child.

My determination of this adoption cause must be governed by the principles set out under Article 53 (2) where D.M’s welfare and best interest throughout his life is my paramount concern. I am also conscious as the Children’s Act directs me under section 158 to consider various threshold criteria before granting the orders sought by the applicant.

In the instant application I am satisfied that the applicant does not fall on any of the exceptions set out under section 158 to deny her the right to adopt the minor. The applicant has also ably demonstrated that the consent of the biological father be dispensed with by virtue of the cogent circumstances of this case as provided for under section 159 of the Children’s Act. The approach to this issue was such that the deceased and mother to D.M made it discreet to disclose the identity of the father. The subsequent inquiries according to the applicant revealed no tangible evidence as to who the biological father to D.M was at the time of his birth.

In determining this cause I will respect and maintain the confidentiality of the mother for the save and welfare of the minor D.M. When I weigh the matter in totality it is undoubtedly clear that the applicant has put forth a solid case for an adoption order in her favour to assume parental responsibility of D.M. In appraising the application I have considered a wide assortment of factors drawing inspirations from the constitution and statute governing children rights in Kenya. I am convinced to a high degree that many of those provisions point to a conclusion that it would be in the best interest of the minor to be adopted by the applicant.

It is not in dispute that the minor will benefit from the continuity of the family set up he has been used to since birth. This same environment is the one he has known and formed close family ties and attachment. As provided for under Article 45(1) the family is the natural and fundamental unit of society and the necessary basis of social order.

Going by this provision the minor will keep a close knit relationship with the wider extended siblings of his later mother. He will be geographically grown in a social/cultural environment he is aware and used to since birth. These factors to me weigh in the final orders I am about to make.

I have no hesitation in finding that in considering this application the applicant is a fit and proper person to assume full parental responsibilities and rights in favour of D.M. She has demonstrated willingness and consent to maintain, care, and exercise parental responsibilities to the minor. The Child Welfare Society and the Director of Children Services Kajiado County have properly assessed the applicant in compliance with the provisions of Article 156, 157, 158 of the Children’s Act 2001.

I have satisfied myself that this kinship adoption is in the best interest of the minor D.M. accordingly the following orders shall abide:

- (1) That the applicant N M M be and is hereby authorized to adopt D.M, the minor child.**
- (2) That the child be known as D.M after adoption.**
- (3) That the Registrar General is hereby directed to make an entry in the adopted child's register in the prescribed form.**
- (4) That the Director of Immigration is at liberty and authorized to issued the adopted child with a Kenyan passport if need be as provided for within the regulatory framework.**
- (5) Costs of this application be in the cause.**

Dated, signed and delivered in open court at Kajiado on 21st day of September, 2017.

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R. NYAKUNDI

JUDGE

In the presence of:

Ms. Nyagah for Maina for the applicant

The applicant

The minor Guardian Ad Litem

Mr. Mateli Court Assistant