



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI MILIMANI

ADOPTION CAUSE NO. 102 OF 2017

IN THE MATTER OF THE CHILDREN'S ACT, 2001

AND

IN THE MATTER OF THE ADOPTION OF

BABY NK ALIAS BM.....MINOR

BY

CKM.....APPLICANT

JUDGMENT

The Applicant; by way of Originating Summons Application and a Statement in Support dated 13th July 2017 sought Orders that she be allowed to adopt Baby NK; the Child herein, that JGM be appointed the legal guardian of the Child, that the Director of Children Services be Ordered to investigate the Applicant's fitness to adopt and file the requisite reports and that upon making of the adoption order, the Minor be known as IKM.

The Applicant is an adult Citizen of Kenya. She is Single and is mother of one ITM. She works at [Particulars Withheld] . She wishes to adopt so as to expand her family as well as give a deserving Child a family to belong to.

The Child in this matter Baby NK is a male Child presumed to have been born on 18th August 2015. He was found abandoned at Mwiki on 19th December 2015.

He was rescued and the matter was reported at Mwiki Police Station and recorded vide OB No. [Particulars Withheld]. The Child was admitted at New Life Home Trust, Nairobi on 5th January 2016 as shown by a copy of the admission letter. He was then committed to the said Home by the Children's Court Nairobi on 6th January 2016 vide **Care and Protection Case No. 139 of 2016**. This is evidenced by a copy of the Court's committal order.

Since his committal, the child remained at the Home until he was placed in the custody of the Applicant on 4th November 2016. The final letter dated from Mwiki Police Station confirmed that since he was abandoned, no one went to claim the Child and that effort to trace the parents of the Child have not been fruitful. The Minor was freed for adoption by Change Trust Adoption Society on 19th October 2016 and a freeing certificate of serial no. 00156 was issued.

RON the proposed guardian *ad-litem* filed her consent to act as such on 14th July, 2017 and was appointed as the guardian *ad-litem* for purposes of this adoption on 21st September 2017 and ordered to file a Report after conducting a home visit at the Applicant's residential home. In her Report filed on 12th October 2017, she stated that the Applicant and the Child have bonded well, that she is being well taken care of by the Applicant and that the Applicant's home was a conducive environment for the Child to grow in, she recommended that the Applicant be allowed to adopt the Child.

KKPI Adoption Society filed their Declaration Report on 19th July 2017 after conducting a Home Visit at the Applicant's Home. It was submitted that the child was in good general health and that he was emotionally stable. Further, they reported that the Applicant had the means to provide for the basic needs of the Child. They confirmed that the Applicant was in good health and strength and that she had no criminal record. They also submitted that the extended family is in full support of the intended adoption.

From their observations, they submitted that the Applicant had indeed bonded with the Child. She was accessed by the Adoption Society and found fit to adopt the Child. They thus recommended the adoption.

The Department of Children services also filed their Report on 12th October 2017 pursuant to the Court order of 12th October 2017. From the home visit conducted by their Officer, it was reported that the Applicant's home was a good environment for the Child to grow in and that so far the Applicant had taken good care of the Child and that he was happy and in good health.

The Applicant was said to be financially, emotionally and physically stable to take care of the Child. It was also confirmed that she had a good criminal record. They submitted that the Applicant has proved capable of taking parental responsibility over the Child and that she had fulfilled all the legal requirements for adoption under the Children's Act. Accordingly, they recommended the Adoption as it will be in the best interest of the Child.

DETERMINATION

From the evidence adduced and Reports filed, this is a local adoption whereby the Applicant, an adult Kenyan citizen seeks to adopt.

From the Reports filed, it is certain before this Court that the Applicant is indeed capable of taking on parental responsibility for the Child. Further, she has been assessed and found capable of adopting the Child. She was placed with the Child for the mandatory bonding period and both have bonded well and become fond of each other. The Applicant meets all the pre-requisite to adopt a Child as prescribed in **Section 156 of the Children's Act, 2001**. The consents of the biological parents of the child are hereby dispensed with pursuant to **Section 159 of the Children's Act, 2001** since the child was abandoned at birth, and her biological parents could not be traced to give their consent.

In light of **Section 158(2) (b) of the Children's Act, 2001** which provides:

“...An adoption order shall not be made in favour of the following persons unless the court is satisfied that there are special circumstances that justify the making of an adoption order

(a) ...

(b) A sole female applicant in respect of a male child;

(c) ...

(d) ...”

This Court takes into account the special circumstances. With regard to the Applicant certifying the male child. These are that the Applicant is a parent, a mother of one daughter, that the Child was abandoned at

birth and that the Applicant is ready and willing to adopt the Minor and provide him with a home. Moreover, the two have bonded well as mother and son. It is in the best interests of the male child to take the opportunity to grow in a family as the Applicant has offered.

From the foregoing and in light of the special circumstances reiterated above, this Court is satisfied that it would be in the best interest of the child to be adopted by the Applicant. Hence, this Court orders that; the Applicant CKM is hereby allowed to adopt BABY NK. Henceforth, the child shall be known as IKM and he shall be presumed to be a citizen of Kenya by birth born on 18th August 2015 in Mwiki, Nairobi County. JGM friend to the Applicant, shall be the legal guardian of the child should such eventuality arise. This Court directs the Registrar General to duly enter this order in the Adoption Register. The guardian *ad litem* is hereby discharged.

IT IS SO ORDERED.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 30TH DAY OF OCTOBER, 2017.

M.W.MUIGAI

JUDGE