



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

(FAMILY DIVISION)

ADOPTION CAUSE NO. 174 OF 2013

IN THE MATTER OF AN APPLICATION FOR ADOPTION OF BABY D W alias J M M

JUDGEMENT

1. The applicant, E W M, is a Kenyan citizen. She is a widow. She seeks to adopt Baby D W also known as J M M. Her originating summons is dated 25th July 2013.
2. The child in question was found abandoned at a bus stage within Kitui township on 16th April 2010 by a good Samaritan, who took him to the Kitui Police Station the same day. The child was then admitted at the AIC Kitui Children's Home, for care and protection. He was eventually formally committed to that institution by the Kitui Children's Court. The police were unable to trace his biological parents. He is estimated to have been born on 7th April 2010.
3. The child was freed for adoption by the Child Welfare Society of Kenya adoption society by their certificate number 0531 of 13th December 2012. The child was placed with the applicant on 14th November 2011.
4. To facilitate this adoption, the applicants have been assessed by the Child Welfare Society of Kenya, the Director of Children Services and the guardian *ad litem*, Esther Nyambura Mburu. The three have compiled and filed their reports in court. That of the Director of Children Services is dated 25th February 2016, while that of the guardian *ad litem* is dated 21st March 2014. The report by the Child Welfare Society of Kenya is dated 13th December 2012.
5. All these reports are favourable and recommend the proposed adoption. The applicant has demonstrated that she has the financial and emotional capability and capacity to take care of the child. The child himself appears to have bonded well with her and he considers her to be his mother. I have taken note of the fact that the applicant is in the process of adopting another child, this time female, but she has no biological children of her own.
6. In the opinion of this court it would be in the best interests of the child that he is adopted by the applicant. The applicant will be able to provide a home and a family for the child to grow up in and thereafter be a useful member of the family. Consequently, the applicant shall assume all parental rights and duties of the biological parent in respect of the adopted child; she shall treat the adopted child as if he was born to her. The applicant has been made aware that once the adoption order is made it shall be final and binding during the lifetime of the child and that the child shall have the right to inherit her property. The applicant cannot give up the child owing to any subsequent unforeseen behaviour or other changes in the child.

7. I have taken note of the fact that the applicant took custody of the child before the child had been freed for adoption. This is contrary to the very clear provisions of the Children Act, Cap 141, Laws of Kenya, on adoption. I have however taken cognisance of the fact that the child has bonded well with the applicant and considers her to be his mother. I have also noted that the applicant has been assessed and found suitable. It would be in the interest of the child to allow the adoption despite that anomaly.

8. I have noted too that this is a case of a single female adopting a male child. The law frowns on such a scenario unless special circumstances exist in favour of the adoption. I have scrutinised the record and found such circumstances to exist. In the first place, the applicant is in the process of adopting a female child. Secondly, it is usually difficult for male children to find suitable persons to adopt them, and when a person, such as the applicant, shows interest then she should be encouraged so that she can give a chance to an abandoned child to find a home to grow up in.

9. I am satisfied that all the legal requirements for a local adoption have been met, and I therefore make the following orders:-

(a) That the applicant, E W M, is hereby allowed to adopt the child Baby D W, also known as J M M, who shall hereafter be known J M M;

(b) That it shall be presumed that the said child is Kenyan by birth and it shall be presumed that he was born on 7th April 2010.

(c) That L W M is hereby appointed legal guardian of the child in the event something untoward happens to the applicant;

(d) That the Registrar-General is hereby directed to enter this adoption order in the adoption register; and

(e) That the guardian *ad litem* is hereby discharged.

DATED, SIGNED and DELIVERED at NAIROBI this 22ND DAY OF JULY, 2016.

W. MUSYOKA

JUDGE