



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS

ADOPTION CASE NO. 10 OF 2015

IN THEMATTER OF BABY A (THE CHILD)

AND ON THE APPLICATION FOR AN ADOPTION ORDER BY

M M APPELLANT

JUDGMENT OF THE COURT

1. Before the court is Originating **Summons** on the application for an adoption order under **Sections 154, 16 (1), 157 (1) a, 4 (a), 159 (4) (6), (7), (8) a, 160 (1) (2) (4) 163, 164 (1) and 170** of the **Children Act No. 8 of 2001 and Section 24** of the **Interpretation and General Provisions Act, Cap 2 Laws of Kenya** and all enabling provisions of **Law**.

2. The summons seek the following orders:-

- i. THAT S M K of C/o Post Office Box Number 1473 Kangundo in the Republic of Kenya be appointed Guardian ad litem.**
- ii. THAT the Director – Children’s Department, Office of the Vice President, Ministry of Home Affairs investigates the Applicant’s fitness to adopt and file a report.**
- iii. THAT the Applicant be authorized to adopt Baby A to be known as A T M.**
- iv. THAT M M be appointed legal guardian of the child.**
- v. THAT the Registrar General be ordered to enter the child’s name in the Adoption Register.**
- vi. THAT the Child be considered a Kenyan Citizen.**
- vii. THAT the court be pleased to make any further orders it deems necessary.**

3. The application is premised on the grounds set out therein mainly that the orders sought are in the best interest of the child. The Application is also supported by statement and affidavit of the Applicant **M M** filed herein on 25th March 2015. The brief background of the child to be adopted, called **Baby A**, is that the child was abandoned at **Nakuru** in Ward 3 at the **Provincial General Hospital** by her mother **M M**. The matter was reported to **Nakuru Police Station** and was recorded vide OB No. 101/4/3/08 in August 2008. The area chief was asked about committal of the child to the home and he recommended that the child be committed to **Arise and Shine Home**. She was placed with **Arise and Shine Children’s Home**, and was subsequently committed to the care and custody of the said home by the **Resident Magistrate, Nakuru Children’s Court** on 31st March 2008 vide **Care and Protection Case Number 121 of 2008**

for a period of 3 years. Her committal was also renewed after the lapse of the three years on 17th October 2011 at the Children's Court of **Molo** vide **Protection and Care Case No. 263 of 2011** for another 3 years.

4. The name of the Applicant is **M M**, an adult female of sound mind according to the annexed medical certificate. The Applicant is 52 years old and is single. She is a business lady.

5. The child was committed to the Applicant's care by the **Thomas Barnado House** on 20th December 2013 and the Applicant has taken care of the child since then. The said **Thomas Barnado** being the child House and **Gospel Church Baby Center** have no objection to the Applicant adopting the child and has granted the Applicant the approval and a certificate declaring the child free for adoption – See (“MB8”). The Applicant's brother, **M M** has agreed to be the legal guardian of the child and has undertaken to care for the child in case of any incapacity by the Applicant.

6. The application is also supported by Affidavit of **M M** who is attesting to the fitness of **S M K** as being Guardian Ad Litem to the child.

7. The **Originating Summons** on the application was heard on 20th July 2016 where **S M K** PW1 gave evidence and testified in favour of the adoption being granted to the Applicant. The Applicant also testified and satisfied the court that she has a safe hand to place the child in. The application was also supported by the testimony of **D K** PW3, who is a representative from **Kenya Children Homes Adoption Society**. The witness submitted a report filed on 6th July 2015. I have looked at the said report and the original certificates attached to it. The report names the child as **A D M**. He is male and was born on 20th January 2008. The minor was abandoned at **Provincial General Hospital** of **Nakuru**. He was rescued and admitted at the hospital's nursery unit on 22nd January 2008 for care and management. He was later placed in a **Charitable Children's Institution**. The matter was later reported to **Nakuru Police Station** and was recorded vide Occurrence Book Number 101/4/3/08 but no letter was issued.

8. In August 2008, the area chief was asked about committal of the child to the home and recommended that the child be committed to **Arise and Shine Home**.

9. Information available indicated that the child is in good health and that the home ensured that the child's immunization schedule was followed as per the **Kenya Expanded Programme Guidelines** on immunizations. Her HIV test result was negative.

10. The minor was committed to **Arise and Shine at Nakuru Children Court** for care and protection at the **Naivasha Children's Court** on 5th May 2014 vide **Protection and Case Number 263/2011** for a period of three years.

11. The **Nakuru Police Station** confirmed that investigations were carried out and no one ever claimed the child. Attempts to trace the parents of the child have been futile. The minor was freed for adoption by the **Kenya Children's Homes Adoption Society Case Committee** on its sitting of 18th December 2013 and a **Freeing Certificate Serial No. [Particulars withheld]** issued pursuant to **Section 156 (1)** of the **Children's Act 2001**.

12. The Applicant's application to the **Kenya Children & Homes Adoption Society** was approved on 18th June 2013.

13. I have carefully considered the **Originating Summons** and the application. The application is adequately supported by original documents. The **Baby A** has been under the care of the Applicant since 20th December 2013. This court has also cross-examined the Applicant and is satisfied that the Applicant does not only deserve to be given adoption orders, but that it would be in the interest of the child to do so, and that the Applicant is capable of taking care of the baby. The **Kenya Children's Homes Adoption Society** has also given a certificate declaring the child free for adoption. The said certificate is **No.**

[Particulars withheld] and dated 18th December 2013.

14. Pursuant to the foregoing the judgment of this court is that the Applicant **M M** is hereby authorized to adopt **Baby A** to be known as **A T M** and this court makes further orders as follows:-

- i. THAT S M K of C/o Post Office Box Number 1473, Kangundo in the Republic of Kenya be and is hereby appointed Guardian ad litem.**
- ii. THAT the Director – Children’s Department, Office of the Vice President, Ministry of Home Affairs does investigate the Applicant’s fitness to adopt and file a report.**
- iii. THAT the Applicant be and is hereby authorized to adopt Baby A to be known as A T M.**
- iv. THAT M M be and is hereby appointed legal guardians of the child.**
- v. THAT the Registrar General is ordered to enter the child’s name in the Adoption Register.**
- vi. THAT the Child be considered a Kenyan Citizen.**

That is the judgment of the court.

Dated and delivered at Machakos this 22nd day of September 2016.

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E. OGOLA

JUDGE