



REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI
ADOPTION CASE NO. 108 OF 2014
IN THE MATTER OF THE CHILDREN ACT, 2001
IN THE MATTER OF THE ADOPTION OF BABY Z S (MINOR)
AND
P I M.....APPLICANT

JUDGMENT

The Applicant in this matter, P I M through her Application by Chamber Summons filed on the 22nd April 2014, sought to adopt the child in this matter, Baby Z S. The Applicant is a Kenyan citizen employed by [particulars withheld] Company Limited. The Applicant wishes to adopt a child. She has no child of her own due to medical reasons.

The child in this matter Baby Z S was abandoned on 27th May 2012 at [particulars withheld] Church in Malava. The child was rescued by good Samaritans who reported the matter to the office of the Chief at Shilengo Sub Location on 28th May 2012. On the 31st May 2012 they reported the matter at Shambere Police Patrol Base vide O.B. No. 15/31/05/2012. Baby Z S was committed to PEFA Rehema Children's Home Bukura by the Children's Court at Kakamega on 07th September 2012. The Applicant was placed with the child for bonding purposes on 24th July 2013.

The child was declared free for adoption by the Child Welfare Society of Kenya on the 15th July 2014 via Freeing Certificate No. [particulars withheld]. The M K K was appointed as the Guardian ad litem by an order of the court on the 04th November 2014. The same order instructed the Director of Children's Services and the Guardian ad Litem file their reports within 45 days.

The Guardian ad Litem, M K K wrote a favourable report with regards to the suitability of the Applicant as a potential adoptive parent. In the Guardian's opinion the child was secure, nurtured valued and loved. The Guardian ad Litem was of the opinion that it is in the best interest of the child to be adopted by the Applicant.

The Director of Children Services in his report questioned where the child was between 28th May 2012 and 08th June 2012 when he was admitted to the Children's Home. The Director of Children Services also expressed concern that there is no letter from the Police clearly showing that nobody had come to claim the child more than six months after he was found abandoned. The only letter from the Police attempting to confirm that more than six months since Baby Z S was found abandoned nobody had come to claim him is dated 03rd May 2012. Another letter from the same police station is undated even though it has a stamp from the District Children's Office, Kakamega North District bearing the date 08th June 2012

showing that it was written around the same time. Going by these two letters, it is not certain whether the adoption of the child in this matter is in line with **Section 159** of the **Children Act**.

The Director also pointed out that there is no Certificate in the Application presented to this office showing that the child has been duly declared free for adoption. The Director also noted that this is an adoption Application where a sole female Applicant is applying to adopt a male child. The Application is therefore challenged by **Section 158 (2) (a)** of the **Children Act**. It is not clear which special circumstances the society relied on to place the young baby boy with the Applicant.

The Child Welfare Society of Kenya responded to the Director's concerns in an Addendum report dated 16th September 2016. On the issue of where the child was between 28th May 2012 and 08th June 2012 the Child Welfare Society of Kenya clarified indicating that the child was with the rescuers. On the issue of the absence of a police letter showing that the child remained unclaimed, the police formally indicated in another letter dated 07th January 2016 that by the time they issued the final police letter, more than six months had lapsed and the actual date was 03rd May 2013. There is also an updated report from the police dated 19th February 2-16 stating that nobody has come to claim the child.

The Director had also raised the issue of whether there was a freeing certificate showing that the child was duly declared free for adoption. At the time the Director was preparing the report the child had been declared free for adoption. The Freeing Certificate was attached. The special circumstance under which under which the Applicant was placed with the male child is that the Applicant was the only person available to adopt the Baby boy.

This is a local adoption but with its own unique circumstances,

The **Children Act** at **Section 158 (2)** provides that:

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. a sole male applicant in respect of a female child;

b. a sole female applicant in respect of a male child;

c. an applicant or joint applicants who has or both have attained the age of sixty-five years;

d. a sole foreign female applicant.

The court finds that there are special circumstances in the instant case that allow for an adoption order to be made in favour of the Applicant. The child is in need of alternative care and parental attention in a family environment and the Applicant is the only available family willing to foster care and nurture him.

The Applicant was assessed by the Guardian ad Litem and the Child Welfare Society and was found to be suitable to adopt. She is financially and socially capable of providing for the child's needs. The Applicant is well aware that an order of adoption grants the child inheritance rights to her property and she has no objection to it.

The Court finds that the Applicant has met the criteria of local adoptions and it would be in the child's best interest if he was adopted. The Court grants the orders that the Applicant shall assume the responsibilities of a parent to the child. The child shall be entitled to inherit from the property of the Applicant and shall not be given up because of any eventualities that might result.

The Applicant, P I M is hereby authorized to adopt the child Baby Zachary Shikumo. The child shall therefore be known as Z M I, his date of birth shall be 08th September 2011 and his place of birth shall be, Malava, Kenya. He is therefore presumed to be a Kenyan Citizen by birth. J M M the brother to the

Applicant is hereby appointed to be the legal guardian of the child should any misfortune befall the Applicant. The Registrar General is hereby directed to enter this order in the Adoption Register. The guardian ad litem is hereby discharged. It is so ordered.

READ AND DELIVERED IN OPEN COURT AT NAIROBI THIS 13TH DAY OF OCTOBER, 2016

M. W. MUIGAI

JUDGE

In the presence of;

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