



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ADOPTION CAUSE NO. 48 OF 2016 (OS)
IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001
IN THE MATTER OF ADOPTION OF BABY M

BY

S W B (APPLICANT)

JUDGMENT

1. The Applicant S W B is a Kenyan citizen. She is single and has one adopted child, A I K B. She wishes to adopt the child known as Baby M, a minor of the male sex through the Originating Summons dated 11th April, 2016. The Applicant indicates that she is a Supply Chain Administrator with [particulars withheld]. She resides in Nairobi and professes the Christian faith.
2. Records indicate that the child who is the subject of this adoption proceedings was abandoned at infancy, within Ruai area. He was rescued by a Good Samaritan who reported the matter at Ruai Police Station and an entry was made to that effect vide OB [particulars withheld].
3. The child was referred to Mbagathi hospital for treatment and later handed over to Thomas Barnado Children's Home by the Ruai Police Station for care and protection. He was later officially committed to the same Home on 5th July, 2013 by the Resident Magistrate Children's Court Nairobi, vide committal warrant No. 209 of 2013. A letter dated 29th May, 2014 from Ruai Police Station indicates that the biological parents of the child have not been traced.
4. The child was declared free for adoption by Kenya Children's Home, an Adoption society on 12th November, 2014 as per Section 156 of the Children Act 2001 as confirmed by certificate serial No. [particulars withheld]. He was released into the custody of the Applicant for mandatory foster care pending adoption on 30th November, 2015, upon her signing a Foster Care Agreement dated the same day. Since then he has been in the continuous custody and care of the Applicant.
5. Prior to the hearing of the adoption application, Kenya Children's Home, prepared and filed a report in court dated 18th May, 2016 declaring the Applicant suitable to adopt.
6. The Adoption Society, guardian ad litem and the Director of Children's Services have all made home visits and established that the Applicant is financially and emotionally capable of providing for the up keep and education of the child.

7. The Director of Children’s Service’s report dated 14th September, 2016 recommended the adoption, for reasons that the child stands to gain from the opportunities available to him by becoming the son of the Applicant, as opposed to life in an institution. The guardian ad litem, M/s. M N K also filed a report that was favourable and recommended the adoption of the child by the Applicant.

8. The Director of Children’s Services reported that the Applicant is a second time adopter who has been proved to be suitable in an earlier adoption and granted orders for the first child who is doing very well. The child having been abandoned by the roadside when he was an infant means that the biological parent did not desire to raise him.

9. The court notes that the subject is a male child and the Applicant is a single female. **Section 158(2)** of the **Children Act** provides for category of persons in favour of whom an adoption order may not be made unless there exists special circumstances as follows:

“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.”

10. From the report of the Director for Children Services the court notes that the child stayed in a children’s home until he was placed with the Applicant later. Under section 158(2) (b) of the Children Act an adoption should not be made of a male child by a female applicant, unless there exist special circumstances that justify the making of an adoption order.

11. The National Adoption Committee on 13th January 2010, by a letter of that date, formulated guidelines where special circumstances may be found for sole applicants, with respect to Section 158(2). The special circumstances to be considered for a sole female adopting a male child are noted as follows:

i. When the child is a relative,

ii. When the child has special needs and the applicant is willing and has capacity to take care of the child,

iii. Where the applicant has adopted or has another biological child or children over whom she is willingly exercising parental responsibility,

iv. Where the child to be adopted has a sibling who is also being adopted by the applicant,

v. The applicant is the only person available to adopt the child, and

vi. Where the applicant is the legal guardian of the child or children appointed by will or in adoption proceedings and the parents die or become permanently incapacitated.

12. The Director for Children’s Services recommended that the Applicant having adopted another baby girl in Adoption Cause No. 184 of 2014 be allowed to adopt Baby M. The court therefore finds that the Applicant meets the special circumstances as set out in No. (iii) above.

13. Of note is that the orders sought by the Applicant relate to a child. In law, in any matter concerning a child, the best interests of the child are paramount. **Article 53(2)** of the **Constitution** provides the guiding principle on this question as follows:

“A child’s best interests are of paramount importance in every matter concerning the child.”

This principle also finds expression in the **Children Act No. 8 of 2001** and in particular **Section 4(3)** thereof. The Applicant’s opportunity or desire to have a child of her own is therefore only of secondly importance.

14. After a careful assessment of the reports filed herein and from the observation of the interaction of the Applicant and the child during the hearing, this court has formed the opinion that it would be in the best interest of the child to be adopted by the Applicant.

15. The child appears to have thrived and is healthy and happy under the care of the Applicant. The child was in court during the hearing and appeared to have bonded well with the Applicant and her adopted baby girl. He clearly considered her as his family. The court also observes that the Applicant being aged 36 years, she is older than the child by more than 21 years and is not yet above 65 years of age. She therefore meets the requirements of the law on age.

16. In the premise I find that it is in the best interest of the child herein that I allow, as I hereby do, the application brought by way of Originating Summons dated 11th April, 2016 and order as follows:

- i. The Applicant S W B is hereby allowed to adopt baby **M**, who shall henceforth be known as **M K B**.
- ii. His date of birth is presumed to be 28th November, 2013.
- iii. He is presumed to have been born in Kenya in accordance with **Article 14 (3)** of the **Constitution**, and the place of birth shall be Nairobi.
- iv. R N B (sister to the Applicant) is hereby appointed legal guardian of the child in the event that the Applicant dies or is incapacitated by ill-health.
- v. the Registrar General is hereby directed to enter this order in the Adoption Register.
- vi. The Director of Immigration is hereby authorised to issue the child with a Kenyan passport.
- vii. the guardian ad litem is hereby discharged.

It is so ordered.

SIGNED DATED and DELIVERED in open court this 24th day of November, 2016.

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L. A. ACHODE

JUDGE