



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
ADOPTION CAUSE NO. 245 OF 2015 (OS)
IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001
IN THE MATTER OF ADOPTION OF BABY C A
BY
I W G (APPLICANT)
JUDGMENT

1. The Applicant I W G is a Kenyan citizen. She is single and she has no child of her own. She wishes to adopt the child known as Baby C A a minor of the female sex through the Originating Summons dated 30th September, 2015. The Applicant indicates that she is a businesswoman and Director of [*particulars withheld*] Properties Limited, a real estate firm. She is a Christian and resides at Lavington. Nairobi.
2. The child who is the subject of this adoption proceedings was abandoned by her mother immediately after birth on 3rd August, 2014 at Thika hospital. The matter was reported at Thika Police Station vide OB No. 35/7/8/2014. On 18th September 2014, the child was officially committed to Limuru Children Home through the Sub County Children Officer in Thika, vide P&C No. 128 of 2014.
3. The child was declared free for adoption by Kenya Children Home Adoption Society on 11th March, 2015 as per Section 156 of the Children Act 2001 as confirmed by certificate serial No. [*particulars withheld*]. She was released into the custody of the Applicant for mandatory foster care pending adoption on 27th March, 2015 upon her signing a Foster Care Agreement dated the same day. Since then she has been in the continuous custody and care of the Applicant.
4. Prior to the hearing of the adoption application, Kenya Children's Homes prepared and filed a report in court dated 20th July, 2015 declaring the Applicant suitable to adopt.
5. 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.
6. The Director of Children's Service's report dated 23rd May, 2016 recommended the adoption, for reasons that the child knows the Applicant as her parent and is attached to her. That she has also bonded well with the Applicant. The guardian ad litem, M/s. J W C also filed a report that was favourable and recommended the adoption of the child by the Applicant.

7. The Director of Children Services' report states that the Applicant does not have children of her own and therefore adopting the subject child herein will present the best opportunity for her to have a child. That the child having been abandoned at infancy in a hospital by her biological mother, means that the biological parent did not desire to raise her.

8. 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 secondary importance.

9. 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, I am satisfied that it is in the best interest of the subject child to be adopted by the Applicant.

10. The child appears to have thrived and is healthy and happy under the care of the Applicant. She was in court during the hearing and appeared to have bonded well with the Applicant. She clearly considered her as her parent. The court also observes that the Applicant being aged 39 years, 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.

11. 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 30th September, 2015 and order as follows:

- i. The Applicant I W G is hereby allowed to adopt baby **C A**, who shall henceforth be known as **M M G**.
- ii. Her date of birth is 3rd August, 2014. She was born in Kenya, and the place of birth shall be Thika.
- iii. C N G and G G (sister and brother to the Applicant), are hereby appointed legal guardians of the child in the event that the Applicant dies or is incapacitated by ill-health.
- iv. The Registrar General is hereby directed to enter this order in the Adoption Register.
- v. The Director of Immigration is hereby authorised to issue the child with a Kenyan passport.
- vi. The guardian ad litem is hereby discharged.

It is so ordered.

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

.....

L. A. ACHODE

JUDGE

In the presence ofAdvocate for the Applicant