



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 161 OF 2015 (OS)

IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001

IN THE MATTER OF ADOPTION OF BABY D J Alias R N

BY

R N C (APPLICANT)

JUDGMENT

1. The Applicant R N C is a Kenyan citizen. She is single and has no child of her own. She wishes to adopt the child known as Baby *Particulars Withheld* a minor of the female sex through the Originating Summons dated 28th May, 2015. The Applicant indicates that she is a businesswoman. She resides in Nairobi.
2. The child who is the subject of this adoption proceedings was found abandoned at a railway station in Nakuru on 3rd October, 2013. She was rescued by a taxi driver at stage Pekers. The matter was reported at Nakuru Police Station and an entry was made to that effect vide OB [particulars withheld].
3. The child was admitted to Africa Gospel Church Baby Centre on the same day for care and protection. She was later officially committed to the same Home on 22nd November 2013 by the Nakuru Children's Court, vide Protection and Care No. 530 of 2013.
4. The child was declared free for adoption by Buckner Kenya Adoption Services on 25th July, 2014 in accordance with 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 13th August, 2014 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.
5. Prior to the hearing of the adoption application, Buckner Kenya Adoption Services prepared and filed a report in court dated 20th July, 2015 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 27th 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 and her nephew. The guardian ad litem, *particulars withheld* also filed a report that was favourable and recommended the adoption of the child by the Applicant.

8. 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 by her biological mother when she was an infant, means that the biological parent did not desire to raise her.

9. 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.

10. 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.

11. 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 55 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.

12. 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 28th May, 2015 and order as follows:

- i. The Applicant R N C is hereby allowed to adopt baby *particular withheld* who shall henceforth be known as **R N**.
- ii. Her date of birth is 3rd June, 2011. She was born in Kenya, and the place of birth shall be Nakuru.
- iii. The Registrar General is hereby directed to enter this order in the Adoption Register.
- iv. The Director of Immigration is hereby authorised to issue the child with a Kenyan passport.
- v. The guardian ad litem is hereby discharged.

It is so ordered.

SIGNED DATED and DELIVERED in open court this **15th day of December, 2016.**

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L. A. ACHODE

JUDGE

In the presence ofAdvocate for the Applicant