



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
ADOPTION CAUSE NO. 6 OF 2015
IN THE MATTER OF THE CHILDREN'S ACT
AND
IN THE MATTER OF ADOPTION OF BABY G W
JUDGMENT

On 12th November, 2009, G W, an infant, was found abandoned in Del Monte farm, at [Particulars withheld] in Thika. A report on her abandonment and rescue was made at the office of the chief of [Particulars withheld] Location the following day; thereafter the infant was placed at Nest Children's Home by the Children Office, Thika West District, for care and protection.

On the 24th December, 2009, the Children's Court at Thika made a committal order committing the infant to the same institution under care and protection order No. 186 of 2009. No doubt this placement was in conformity with section 120(2) of the Children Act which states that any child in need of care and protection may take refuge in a place of safety. The child remained at this institution until 26th July, 2010 when she was placed with the applicant for foster care pending adoption. For all the time she was at the institution no one ever laid any claim on her and to date no such claim has been made.

By an originating summons dated 29th January, 2015, A M M applied to adopt baby Gift. In support of her motion, the applicant told the court that she has continuously lived with the child since the child was placed in her custody for foster care in July, 2010.

She also stated in the statement in support of the application that as of 29th January, 2015 when she filed her application, she was aged 56. She is single and has never been married before. She has no biological children of her own. She is also self-employed and she is of Christian faith. She lives in [Particulars withheld], Othaya in Nyeri County and she is a Kenyan citizen; she has no intentions of relocating to any other country in future. She has also been certified by the Criminal Investigation Department to be a person who has no past criminal record.

The applicant also confirmed that she has not received or agreed to receive any payment or reward in consideration of the adoption and that at no time has she ever made a similar application for an adoption order in respect of the same child.

She understood that upon the making of the adoption order the child would be entitled to all the rights as if she was her own biological child including the rights of inheritance.

During the adoption proceedings, the court noted that the child always clung to the applicant; she appeared healthy and cheerful.

The Child Welfare Society, which is duly registered adoption society, filed a report in court declaring the child free for adoption. A certificate to this effect was filed in court. Apart from the report, the society's representative was also invited to address the court. In declaring the child free for adoption, the Society relied on **section 159(1) (a) (i)** of the **Children Act, 2001** which is to effect that "***abandonment may be presumed if the child appears to have been abandoned at birth or if the person or institution having care and possession of the child has neither seen nor heard from a parent or guardian for a period of at least six months***".

Besides declaring the child free for adoption, the Society also conducted a home study assessment on the applicant and also filed a report to that effect. According to the report dated 10th October, 2012 and filed in court on 22nd July, 2015 it was established that the applicant lived at [Particulars withheld] village, Mahiga location, Othaya Division in the County of Nyeri. She was the last born in a family of seven people three of whom are men while the rest are women; she relates well with all of them and she had their blessings to adopt the infant.

She lives on a hectare of land that she inherited from her parents; she has over 1000 tea bushes on this parcel of land. She works on this farm and it is her sole source of income. It was established that as a tea farmer she earns an average of Kshs 120,000.00 per annum. Besides tea growing, she also grows other crops for subsistence.

On the childcare arrangements, it was established that the applicant's homestead is within the farm and therefore she was able to take care of the child and attend to her needs all the time. The child had bonded well with the applicant and it was the recommendation of the Society that the adoption order be made in favour of the applicant.

The sub County children officer of the Nyeri South district children's office also made a social enquiry report in respect of the applicant and baby G W. This report was filed in court on 28th October, 2015. When the children officer visited the applicant's home she found the applicant together with the child. She established that the child speaks the applicant's mother tongue fluently; she also spoke Swahili language. She also established that the child attends school at [Particulars withheld] Primary School where she is performing well in class. The children officer described the child as being full of life; she added that she is healthy and has no medical complications. She had been fully immunised.

In her assessment, the officer found the applicant to be capable of meeting the basic need of the child including educational and health the needs. Just like the representative of the Child Welfare Society established, this officer also established that the child has bonded well with the applicant. The officer recommended that an adoption order be made.

Having considered the reports by the Child Welfare Society of Kenya and the representative of the Director of Children Services together with all the pleadings filed in court and, having heard the applicant, I am persuaded that the applicants' application is merited and the adoption of the child is appropriate for the sake of her own welfare; it is also in her best interest. I am also satisfied that the pertinent conditions stipulated under **section 158** of the Children Act have been complied with and the necessary consents have been obtained; I am also convinced that the applicant understands the consequences of making an adoption order herein. There is no doubt that the applicant fully understands her responsibilities towards the child.

In the premises, I order that the child, G W, be and is hereby adopted by the applicant. I further order that the said minor be renamed M M M and the Registrar General is ordered to make the appropriate entries in the Adopted Children Register accordingly.

Signed, dated and delivered in open court this 9th day of December, 2016

Ngaah Jairus

JUDGE