



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ADOPTION CAUSE NO.289 OF 2015
IN THE MATTER OF THE CHILDREN ACT NUMBER 8 OF 2001
AND
IN THE MATTER OF AN ADOPTION OF BABY C M (A CHILD)
BY
E S N OAPPLICANT

JUDGMENT

1. The applicant **E S N O** is seeking to be authorized to adopt the baby **C M**. She also seeks that upon making the adoption the child be called **D O M B**. She also seeks that **M W O** and **J A O** (applicant's sister and her husband) be appointed the legal Guardians of the child in the event of death or incapacity of the applicant before the child is of age.

2. **E N O** is a Kenyan citizen aged 45 years old single and never married. She also has a child **B W** whom she adopted in 2012 and with whom she has bonded well with. She is an engineer by profession currently working with Kenya Power and Lighting Company is financially stable and able to take care of the child. The child was placed with her on **6th December 2014** and has been under her continuous care to-date. She has never been charged with nor convicted of a criminal offence under the Third Schedule of the Children's Act 2001. She has been investigated by Little Angles Adoption Agency and found to be a fit adoptive parent. As a single female applicant seeking to adopt a male child there are exceptional circumstances, which she notes as having previously adopted another child who has thrived in her care, she wants to give a needy male child a home as most families in Kenya opt to adopt girls leaving out boys. The applicant is morally stable to bring up both children in a loving family environment.

3. The child was found abandoned in Kibera Mashimoni area on **8th May 2014** at around 10 a.m. he was rescued by one Mweni Mailu who reported the matter to the area chief and eventually to Kilimani police Station and booked vide **OB no. 54/8/5/2014**. The baby was referred and admitted to New Life Home for care and protection on **8th May 2014**. He was committed to the said home on **23rd July 2014** by the Senior Resident Magistrate Children's Court at Nairobi vide care and protection case no. 171 of 2014. A second letter from the police station dated 11th November 2010 stated that since the abandonment no one had reported or gone to claim the child. The child was declared free for adoption on **20th November 2014** by Little Angels Network and issued with a certificate declaring a child free for adoption serial number **001567**. The child was placed with the applicant on **28th November 2014** at only 7 months and he has been in her control and custody since then.

4. The Department of Children’s Services filed their report on **4th July 2016**. The investigator observed that the child and the applicant have bonded well with the applicant. The applicant is employed earns sufficient income and is financially able to comfortably care for the children. The applicant enjoys the support of her immediate family. There appears to be a perfect bond between the child and the applicant’s 1st adopted daughter. The report recommends that it is in the child’s best interest to be adopted by the applicant and for he stands to gain from the opportunities presented to him in becoming the applicant’s son. The applicant has also fulfilled the legal requirements under the Children’s Act.

5. The guardian ad-litem report was filed on **26th May 2016**. She observes that the applicant is diligent in her career and holds a position of Chief Engineer although the position is demanding she spends most of the time out with the children. The applicant lives in a spacious 2-bedroom town house in a secure neighborhood, near a park and there are many schools in the neighborhood. The extended family supports the applicant’s intention to adopt. The applicant is in good health status has investments which supplement her income. The applicant has bonded well with the child who appears clean, well fed and happy. The guardian ad-litem recommends the adoption of the child by the applicant.

6. The applicant is a Kenya citizen hence this is a local adoption. The Department of Children Services and the guardian ad litem reports are favorable and upon perusal of the documents annexed to the said application, it is clear that the applicant has met the legal requirements for adoption. This court finds that it would be in the best interest of baby C M to be adopted by the applicant. Baby C M was abandoned by the biological mother, efforts by the police in tracing his parents or relatives have been fruitless and the child has remained unclaimed to-date. The applicant is a single female seeking to adopt a male child in this regard the court has to consider whether the applicant has fulfilled the requirement of Section 158 (2) which 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—

(b) a sole female applicant in respect of a male child;”

The applicant has previously adopted another child one B W sometime in 2012. There is no report of abuse or mistreatment as against the applicant. The said child has thrived well under her care. What the applicant seeks to do is provide a home for a needy boy and bring him up in a loving home set up. I find this is a special circumstance that shows the capability of the applicant to raise the child. The report by the Department of Children’s services and the guardian ad-litem reports are both favorable and find that the applicant is morally stable and capable to raise the child. They also recommend that it is in the child’s best interest to be adopted by the applicant.

7. The Applicant **E S N O** is hereby authorised to adopt **baby C M** and he shall henceforth be called **D O M B. M W O** and **J A O** (applicant’s sister and her husband) will be the legal Guardians of the child in the event of death or incapacity of the applicant before the child is of age. I direct the Registrar General to enter this order in the adoption register. The child was born in Kenya and is therefore a Kenyan by birth and is entitled all the rights that accrue to Kenyan citizens under the Kenya Constitution 2010 and the Kenya citizenship and Immigration Act. I hereby discharge the guardian ad litem. It is so order.

Dated Signed and delivered this 8th Day of December 2016.

R. E. OUGO

JUDGE

In the presence of:

.....**For the Applicant**

Ms. Charity

Court Clerk