



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 81 OF 2015

IN THE MATTER OF ADOPTION OF M O (A MINOR)

And

IN THE MATTER OF THE APPLICATION FOR ADOPTION

BY

C M H (APPLICANT)

JUDGMENT

1. The applicant is single having been widowed and divorced upon remarriage. Her 1st marriage to M O ended in 2004 when M who was a driver with [particulars withheld] Bus Services, passed away. The marriage had two children E O and J O who according to the applicant passed away in 2004 and 2006 when she was living in the USA and were buried in Uganda. The applicant's second marriage was to one R L H on 27th April 2007 but ended in a divorce on 23rd October 2013 by the General Court of Justice, District Court Division through judgment issued on 23rd October 2013 vide file No. 13-CVD 1028. The applicant seeks to be allowed to adopt M O and the same be known as M O.
2. In her application she has shown that she has obtained confirmation from the Government of America where she intends to reside that they will respect and recognise the adoption order. There is an undertaking By the Carolina Adoption Services dated 13th March 2014 undertaking to honour the adoption order.
3. This is a kinship adoption with the child in this matter being the son of the applicant's nephew H O A and E A O. E passed away in 2013 as evidenced by certificate of death no [particulars withheld]. M, who is in form three at [particulars withheld] High School, lives with his father and paternal grandmother R A in Kendu Bay. R who is sister to the applicant is a widow, having lost her husband in 1996.
4. The applicant says it is her who took care of H and so was close to the family. That each time she comes she lives with M and S whom she has known since they were young and had equally taken care of them since then. The prospective adoptive mother lives with them in Kendu Bay while in the country.
5. The child was interviewed for his consent in line with section 158(4) (f) of the Children Act 2001. The boy confirmed that he lives with his paternal grandmother and his father who is not working. He revealed that he has known the applicant ever since he was born as she is the one who has been

taking care of most of his needs including school fees. He added that when in Kenya which is mostly annually she lives with them. The boys said that he is very close with her and that she is more of a mother to him and readily consented to this adoption bid after being explained to what adoption is all about.

6. The Biological father is H O A. H is a son to the applicant's sister R A. H who lives in Kendu Bay has three children; M who is the first born, A A aged 10 years and who is in class six at [particulars withheld] Primary School and M i O who is aged 6 years and is in class one at [particulars withheld] Primary school. He lives with all the three children and his mother. He disclosed that it is C who has been supporting his children and himself. He lived with her during each school holiday while in school and after he finished his fourth form. After marrying M's mother E in 1997, he lived close by the applicant and would occasionally continue depending on her for subsistence. He was a cobbler who relied on the applicant to sell his shoes. M has thus been living with C from when he was born. By the time she left for the USA in 2003, H was doing business in Nairobi which he closed down to go home since he found it hard to sustain the business without the applicant. He did not want to offer his other children for adoption because he felt they were still young and needed parental care and so requested C to support them while they are with him. He added that he is giving up the child for adoption because he is unable to bear the burden of supporting all the three children. He says that he understood the meaning and effects of adoption and has no problem with it. He readily consented to the adoption in court and during the interview.
7. The child was declared free for adoption by Little Angels Network an adoption society on 26th February 2014 and a declaration certificate serial number [particulars withheld] issued. The Adoption Society, guardian ad litem and the Director of Children's Services have established that the applicant is financially and emotionally capable to provide for the up keep and education of the child.
8. I do note that the applicant is a sole female applicant and seeks to adopt a male child. This is a case of special circumstances as the applicant is the only aunty thus a relative the child has known and she has taken care of him for quite some time now and desires to continue caring for him. This is a kinship adoption and after a careful assessment of the reports filed herein, this court has formed the opinion that it would be in the best interest of the child to be adopted by the Applicant. The Applicant has fulfilled all legal requirements relating to the adoption of the child. There is consent of the biological father. The application is therefore allowed.
9. The applicant C M H is hereby allowed to adopt baby **M O**. He shall henceforth be known as **M O O**. He is presumed to have been born in Kenya. **G O O of USA** shall be the legal Guardians of the child should misfortune befall the applicant. 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 to 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 ordered.

Dated signed and delivered this 28TH Day of August 2015.

R. E. OUGO

JUDGE

In the Presence of:

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

Ms. Charity

Court clerk