



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
ADOPTION CAUSE NO 10 OF 2013
AND
IN THE MATTER OF THE CHILDREN ACT
AND
IN THE MATTER OF WM aka GK
FKM.....APPLICANT

JUDGMENT

The applicant, FKM, is a Kenyan widowed female, of sound mind and who was born in 1962 and is therefore 54 years of age. She seeks to adopt a child known for the purposes of these proceedings as WM also known as GK. The Applicant has moved the Court in this regard by way of an Originating Summons dated 15th October 2012 brought under section 154 of the Children Act, and which was first filed in Nairobi Adoption Cause 232 of 2012, before being transferred to this Court.

The Applicant is seeking the following orders in the said Originating Summons:

1. That FKM be authorised to adopt the child WM aka GK.
2. That the consent of the biological parents be dispensed with as the child was abandoned.
3. That upon the making of the adoption order the said child be known as MNM.
4. That the Registrar General do make the appropriate entry of MNM in the Adopted Children Registrar.
5. That CNN be appointed legal guardian of MNM.

The Applicant also filed a Chamber Summons dated 15th October 2012 seeking the appointment of BMK to act as guardian *ad litem* in respect of the adoption of WM aka GK, and that the Director of Children's Services do prepare a home study report for submission to the Court. These orders were granted by this Court on 30th June 2014.

A summary of these adoption proceedings is as follows. WM aka GK is a male child born on 3rd September 2004 at Kibera Community Health Centre in Nairobi in the Republic of Kenya. Before his birth, his biological mother ENM, had visited the Child Welfare Society of Kenya with the aim of offering the child for adoption immediately after delivery, and signed a mother offer from with Child

Welfare Society of Kenya on 27th August 2004. However, after the child was born on 3rd September 2004, the biological mother left the child at the delivery hospital and failed to return to Child Welfare Society of Kenya after 6 weeks to sign the final consent. The child was rescued and taken to Child Welfare Society of Kenya's Mama Ngina Children's home for safety and neo-natal care.

Child Welfare Society of Kenya also reported the child's abandonment at Langata Police Station on 20th February 2012. The police confirmed vide their letter of 5th September 2012 that neither the biological parents nor any other relatives had been found. WM aka GK stayed at Mama Ngina Children's home until 10th September 2004, when he was placed with the Applicant and her late husband MNK for foster care pending adoption. WM aka GK was declared free for adoption by the Child Welfare Society of Kenya by their certificate No. [particulars withheld] dated 30th October 2014.

The Applicant was married to the deceased MNK until his death on 20th August 2011, and they had no biological children. She is currently self-employed and runs a shop in Machakos. She also owned various properties with her late husband. To facilitate this adoption, BMK and CNN, a sister of the Applicant, filed consents in Court to be the guardian *ad litem* and legal guardian respectively of WM aka GK.

The Child Welfare Society of Kenya also prepared a report dated 30th October 2012 declaring WM aka GK free for adoption under section 159 (1)(a)(i) of the Children Act, as he was presumed to have been abandoned. It also recommended that the child was in need of alternative family care and attention in order to grow up in a family set-up, and therefore adoption would be in his best interest. The said report was filed in Court on 15th February 2016 and adopted by the Court during the hearing as evidence.

The Machakos County Sub County Children Officer also filed a report in Court dated 16th September 2014, upon orders of this Court. The report recommended that the Applicant had fully bonded with WM aka GK, who is now aged 10 years old. Further, that the Applicant is financially stable with capacity to bring up the child to adulthood as her own biological child. The Children's Officer had no objection to the adoption.

Lastly, the guardian *ad litem*, B.M.K., filed a report in Court on 3rd December 2014, in which she stated that the Applicant and her late husband had taken care of WM aka GK since he was one week old, and that he had been in a loving family environment which is the only family he knows. Further, that the Applicant had been a single mother for the last 3 years and continued to provide a stable home for the child emotionally and financially, and bonded closely with him.

Having evaluated the facts of this adoption application, I note that it is a local adoption and that the Applicant is a single female applicant who wishes to adopt a male child. Under Section 158(2)(b) of the Children Act, an adoption order shall not be issued in favour of a sole female applicant in respect of a male child, unless the court is satisfied that there are special circumstances that justify the making of such adoption order. The Adoption Committee established under Section 155(1) of the Children Act issued guidelines on 13th January 2010 in regard to circumstances that the court will take into account, in determining whether the sets of facts put forward by the Applicant fulfils the criteria of special circumstances.

In the case of a sole female applicant adopting a male child, the following are the guidelines on the circumstances which may be considered as special:

1. When the child is a relative.
2. When the child has special needs and the applicant is willing and has capacity to take care of the child.
3. Where the applicant has adopted or has another biological child or children over whom she is willingly exercising parental responsibility.

4. Where the child to be adopted has a sibling who is also being adopted by the applicant.
5. Where the proposed applicant is the only person available to adopt the child.
6. Where the applicant is the legal guardian of the child or children appointed by will or in adoption proceedings and the parents die or become permanently incapacitated.

In the present case, WM aka GK has no record of any known person willing to adopt him. No one in his biological family has claimed him thus far. The Applicant had also made the initial application for adoption with her deceased husband, and had fostered the child with her late husband for seven years with the intention of adopting him. She is therefore the only available person able to adopt the child since the demise of her husband. It would also not be in the interest of the child to separate him from the Applicant at this stage, as she is the only parent he has known. These factors creates special circumstances, and the adoption of WM aka GK by the Applicant is thereby justified.

The Applicant has therefore fulfilled all the legal requirements relating to the adoption of WM aka GK. This court is satisfied that the applicant is qualified and able to take care of the child. The home visits by the guardian *ad litem*, the Adoption Society and the Director of the Children Services established that the Applicant has the financial and emotional capability to provide for the upkeep and education of the child. The reports filed in Court pursuant to these visits also do recommend the Applicant's home as an ideal permanent home for the child. Lastly, this court observed the Applicant with WM aka GK in court, and it was evident that the two had bonded well.

This court therefore forms the opinion that it would be in the best interest of WM aka GK to be adopted by the Applicant. Consequently, the Applicant shall assume all parental rights and duties of the biological parents in respect of the adopted child, and shall treat the adopted child as if he was born to her. The Applicant has also been made aware that once the adoption order is made it shall be final and binding during the lifetime of the child, and that the child shall have the right to maintenance and to inherit their property. The adoption order once made is absolute and irreversible, and the Applicant cannot give up the child owing to any subsequent unforeseen condition or other changes in the child.

I accordingly allow the application for adoption. The applicant, FKM, is hereby allowed to adopt WM aka GK. The consent of the biological mother of the child is hereby dispensed with in accordance with section 159(1)(a)(i) of the Children Act, since her whereabouts are unknown. The child shall henceforth be known as MNM. CNN, a sister of the Applicant, shall be the legal guardian of the child should such eventuality arise. As the child was born in Kenya, he is hereby declared Kenyan by birth. The Registrar-General is directed to enter this adoption order in the adoption register. I hereby also discharge the guardian *ad litem*.

It is so ordered.

Dated, signed and delivered in open court at Machakos this 18th day of November 2015.

P. NYAMWEYA

JUDGE