



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MURANG'A
ADOPTION CAUSE NO. 1 OF 2013
IN THE MATTER OF THE CHILDREN ACT
AND
IN THE MATTER OF ADOPTION OF CHILD M
JUDGMENT

In an originating summons dated 20th April, 2012, the applicant applied to adopt child M, who was born on or around 20th January, 1995.

The Child Welfare Society of Kenya which is a duly registered adoption society filed its report in court on 25th March, 2013 in respect of child M's background. In this report child M is said to have been abandoned at Kasarani Nursing Home immediately after birth on 20th January, 1995. He was rescued by the Society and placed at Mama Ngina Children's Home for care and protection. Efforts by the Society to trace the child's biological parents or his relatives proved fruitless. Although a report was made to the police at Langata police station nobody ever emerged to lay claim on the child.

As at the time of making the application for adoption, child M was above fourteen years and pursuant to **section 158(4)(f)** of the **Children Act of 2001** his consent, which is a requirement for a child of his age, was duly obtained. That section reads;

158. (4) Subject to section 159 an adoption application shall be accompanied by the following written consents to the making of an adoption order of any child-

(a)...

(b)...

(c)...

(d)...

(e)...

(f) in the case of a child who has attained the age of fourteen years

The child was placed under the foster care of the applicant on 27th March, 1995 and since then he had been under her custody and care. In the absence of his biological parents, so it was argued, the child deserved an alternative parental or family care. Seventeen years having passed by without anybody laying

claim on him, it was safe to conclude that the child had been completely abandoned. Abandonment for purposes of adoption proceedings is defined under **section 159(1) (a)** of the **Children Act 2001**; under that provision of the law, *“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 of the child for a period of at least six months.”*

In view of the foregoing background the Child Welfare Society of Kenya which, as noted, is society registered as an adoption society in accordance with **Section 177 of the Children Act** and the rules made thereunder, declared Child M free for adoption.

Apart from the adoption society’s report, the Director of Children Services filed a report pursuant to the functions of his office as prescribed under **section 38** of the Act and more particularly section **38 (2) (h)** thereof where he is required to provide all necessary assistance to the judicial process where orders may be issued in relation to children who may need support or any other form of assistance.

In his report the Director established that child M is happy to be part of the current family and that he loves and respects the applicant and, more importantly, recognises him as his mother.

The applicant herself was once married but her husband passed away; at the time of her husband’s demise child M was already in their custody and they had no other child of their own by then. The applicant owns 3.5 acres of land where she farms and keeps a dairy cow. She has a semi-permanent house while child M lives in a separate house detached from the kitchen whenever he is not in school.

The applicant is financially stable and she has been able to feed, clothe and provide shelter to child M for the past seventeen years. She was also able to cater for child M’s school fees in a private primary school before he joined [particulars withheld] Secondary School where he was expected to sit for his Kenya Certificate of Secondary School Education as at the time this application was made.

When the application for adoption came up for hearing the court had the opportunity to hear from the applicant, child M’s guardian ad litem, a representative from the Child Welfare Society of Kenya and a representative of the Director of Children Services. The court also had occasion to talk to child M. According to him, he knows no other mother apart from the applicant who he acknowledged as having raised him since he was an infant until he is now an adult. He was emphatic that he was comfortable living with her for the rest of his life and that though he was turning eighteen, he will still need her support even in adulthood. He appeared happy, healthy and well built.

The guardian ad litem J W M told the court that he has known the applicant for a long time because she has been his neighbour all along; he also said that he has known child M since he was an infant. He was aware that the child had been taken good care of and that he was ready to step in and assume the parental responsibilities of the child should anything happen to the applicant.

The representatives of the Director of Children services and the Child Welfare Society of Kenya reiterated their contents of their respective reports filed in court; they were both in agreement that it would be in the best interest of the child if the application for adoption was allowed.

I have carefully considered the applicant’s application for adoption of child M including the pertinent pleadings filed herein; I have also considered the reports and the recommendations of both the Director of Children Services and that of the adoption society together with their respective representatives. I have heard from the applicant, the guardian ad litem and the child sought to be adopted. Against this background, I am satisfied that an adoption order would, in the language of **section 4(2)** of the **Act**, be in the best interests of the child. Having obtained all the requisite consents and complied with the relevant provisions of the **Children Act, 2001** there is nothing in the way of such an order being made in favour of the applicant; I am convinced that both the applicant and the child sought to be adopted appreciate the consequences and the responsibilities that come along with an adoption order.

In the premises I order that child M be and is hereby adopted by the applicant. I further order that child M

shall from the date hereof be called **S C N** and the Registrar General is ordered to make appropriate entries in the Adopted Children Register accordingly.

Signed, dated and delivered in open court this 4th April, 2014

Ngaah Jairus

JDUGE