



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
ADOPTION CAUSE NO. 23 OF 2013

IN THE MATTER OF THE CHILDREN ACT 2001

AND

IN THE MATTER OF ADOPTION OF BABY R M

AND

IN THE MATTER OF AN APPLICATION FOR ORDERS OF ADOPTION OF BABY R M BY H W N

JUDGMENT

The applicant **H W N** filed in court this originating summons dated 18th October, 2013 seeking *inter alia* the following orders

- “1. **THAT** the consent of the biological parents of baby **R M** be and is hereby dispensed with since the child was abandoned at Siranga area in Kibera and the efforts by authorities have not borne any fruits.
2. **THAT** the applicant **MISS H W N** be allowed to adopt the child and the child be called **A O M** after adoption.
5. **THAT** the Registrar-General be and is hereby ordered to make the appropriate entries in the Adopted Children’s Register in respect of baby **R M.**”

The application was disposed of by way of *vive voce* evidence. On 12th November, 2013 the court did approve the appointment of ‘**L W N**’ as *Guardian ad Litem*. Section 156 of the Children Act, 2001 provides as follows

“No arrangements shall be commenced for the adoption of a child unless the child is at least six weeks old and has been declared free for adoption by a registered adoption society in accordance with the rules prescribed in that behalf.”

The child herein was born on 16th January, 2012. At the time when this application was filed in court in October, 2013 the child was about 1½ years old. He was well above the six week age limit set out in the Act. Similarly I have perused the certificate annexed to the application being certificate dated 5th September, 2012 serial number xxxxx issued by the Little Angels Network (which is a registered adoption society) declaring the child Free for Adoption. As such I am satisfied that all the legal

prerequisites for this adoption have been complied with and that the matter is properly before the court.

THE APPLICANT

The applicant is a single woman who has two biological daughters aged 18 years and 17 years. The applicant lives in the Shanzu area of Mombasa where she has her own home and engages in clearing and forwarding business as a means to support herself and her children. The applicant was in a relationship for 13 years with the father of her two daughters but eventually the two parted ways. She remained with her daughters and has single handedly provided for all their needs. The applicant has a desire to 'give back' to society and feels that by adopting she will be in a position to give a child a good chance in life. She is a Catholic Christian and attends the Holy Ghost Cathedral in Mombasa.

The applicant did testify before me. She did confirm that she fully understood the legal implications of an adoption order. She stated that she was ready to treat this child as her own biological child and would accord him all such rights. She has discussed her decision with her family members and more importantly with her two daughters who have encouraged her and welcome the child as their younger brother. Both daughters did sign written consents and one of them named 'E W' did testify before me. She confirmed her consent for the adoption.

I note that the applicant has obtained a certificate of Good Conduct serial number 152255 from the Kenya Police indicating that she has no criminal antecedents. My own opinion is that the applicant is a mature woman who has a stable job and is financially capable to provide for the needs of this child. I have no doubt that she has carefully considered the decision to adopt and that she is motivated by a genuine desire to 'give back' to society. I find the applicant to be a suitable adoptive parent.

THE CHILD

The history of the child is that he was found abandoned in the Siranga area of Kibera slum in Nairobi on 18th January, 2012. A good Samaritan picked him and reported the matter to the Kilimani police station. The child was then taken to Kenyatta National Hospital for a medical check and there after he was committed to New Life Home by the Nairobi Children Court. From the time of his abandonment no person has come forward to claim the child. Police efforts to trace his biological parents have been unsuccessful. A letter dated 4th September, 2012 from the OCS Kilimani police station confirms this. As such there exists no known person from whom consent for this adoption can be sought and/or obtained. I therefore waive the requirements for consent in line with section 159 of the Children Act.

THE APPLICATION

The law by virtue of section 4(a) Children Act requires that in making such a decision the court must give priority to the 'best interest' of the child. As stated earlier this child was abandoned. His birth parents were either unable or unwilling to provide him with a home. The child could have been accommodated in a Children's Home but this means that he would miss out on the unique experience of family life. I find that the child has already been integrated into and has bonded with the applicants and her daughters. It is evident that they are all very fond of the child. This adoption in my view certainly advances the child's best interests. He will be allowed an opportunity to grow in a loving and stable home environment. I therefore authorize the adoption. I the originating summons dated 18th October, 2013 in terms of prayers (3), (4) and (5). No order on costs. **Dated and delivered in Mombasa this 31st day of July, 2014.**

M. ODERO

JUDGE

In the presence of:

Ms. Mwatu for Applicant