



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
ADOPTION CAUSE NO. 6 OF 2014

IN THE MATTER OF THE CHILDREN ACT 2001

AND

IN THE MATTER OF ADOPTION OF BABY G N also known as BABY P K

AND

**IN THE MATTER OF AN APPLICATION FOR ORDERS OF ADOPTION OF BABY G N also
known as BABY P K BY A W W**

JUDGMENT

The applicant herein **A W W** has filed in court this originating summons dated 9th April, 2014 seeking *inter alia* the following orders

- “1. Pursuant to the provisions of SECTION 159 OF THE CHILDREN ACT, 2001, this Honourable Court be pleased to dispense with the requirements of the consent to the adoption as required by the provisions of SECTION 158 OF THE CHILDREN ACT, 2001.**
- 2. The applicant **A W W** be authorized to adopt **G N ALSO KNOWN AS** baby **P K** a child.**
- 3. Upon the making of the adoption order, the child to be known as D W A.**
- 4. Upon the making of the adoption order **M W W** be appointed as provided for the provisions of SECTION 164 OF THE CHILDREN ACT, 2001.**
- 5. Upon the making of the adoption order, The Registrar General do make an entry in the Adopted Children’s Register.**
- 6. The costs of this application be costs in the cause.”**

The application was disposed of by way of *vive voce* evidence. On 7th May, 2014 the court did approve the appointment of ‘*M T N*’ as the *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 whose given names are P K was born on 28th May, 2013. At the time when this application to adopt her was filed on 10th April, 2014 the child was about two (2) years old thus she was well above the six week age limit provided by section 156. I have seen annexed to the application an original copy of a certificate serial number xxxxx dated 9th October, 2013 declaring the said child Free for Adoption. This certificate was issued by the Little Angels Network which is a registered adoption society. I am therefore satisfied that all the legal prerequisites for this adoption have been met and that the application is properly before this court.

THE APPLICANT

The applicant A W was born on 2nd January, 1975 therefore she is now 39 years old. She is a single woman who has never been married and has no biological child of her own but has suffered several miscarriages. The applicant who lives in her own home in [particulars withheld] in Mombasa works as a director for an ICT company.

I have carefully perused the Pre-Placement Report prepared by the Adoption Society. It indicates that the applicant has always loved children but for some unexplained reason has been unable to bear a child of her own. She did attempt fertility treatments going even to South Africa to pursue the same but no tangible benefits were realized. It is for this reason that the applicant decided to settle on the option of adoption. I note that the applicant is a mature woman with a stable career. She owns her own house which has been described as spacious and certainly is a suitable place in which she can raise a young child. She is in a stable career and earns sufficiently to provide this child with a comfortable life. I note that the applicant has annexed a certificate of Good Conduct serial number xxxxx issued by the Kenya Police indicating that she has no criminal antecedents.

The applicant was raised in a stable home with loving parents both of whom are still alive. She maintains close ties with her parents and her siblings and thus has a strong family support network. She is physically and mentally fit and is well able to take up the role of mothering this child. I did interview the applicant and she confirmed that she fully understood the legal implications of an adoption order. She confirms further that her family support and welcome her decision to adopt a child. All in all I am satisfied that the applicant is a suitable person to adopt this child.

THE CHILD

The child was born on 28th May, 2012 at the Coast General Hospital in Mombasa. Her birth mother died soon after delivering the child. No person came forward to claim the child or even the mother's body. The mother was eventually buried as an unclaimed body by the Mombasa Municipal Council. The matter was reported to police at Makupa police station and the child was committed by the Tononoka Children Court to the Baby Life Rescue Centre in Mombasa on 31st July, 2012. The telephone contact left by the child's mother remained unanswered. To date no person has come forward to claim the child. Police efforts to trace the relatives of the biological mother have borne no fruit. The child was clearly abandoned. Since there is no known person from whom consent for this adoption can be sought and/or obtained I do hereby waive all requirements for consent to this adoption in line with section 159 of the Children Act.

THE APPLICATION

The applicant met the child at the Children Home and took the child into her care and custody when the child was aged six months old. From that time to date this child has been living with the applicant who

has provided for all her needs. I have carefully perused the Home Report prepared by the Children Department as well as the report of the *Guardian ad Litem*. It is clear that the child has settled well in her new environment and the two have created a family unit together. The child has clearly bonded with the applicant who now is the only mother the child knows. I was able to observe the child when they appeared before me. She was a happy, smart and well-groomed little girl who referred to the applicant as 'mum'. I have no doubt that the two share a strong bond. Through this adoption this child who had been abandoned and had no place to call home will now be raised in a loving and stable home environment by a mother who will love her as her own. This certainly is in the **best interests** of this child. I therefore authorize this adoption and I hereby allow the originating summons dated 9th April, 2014 in terms of prayers (1), (2), (3), (4) and (5). I make no order on costs.

Dated and delivered in Mombasa this 30th day of July, 2014.

M. ODERO

JUDGE

In the presence of:

Mr. Njoroge for Applicant

Court Clerk Mutisya