



REPUBLIC OF KENYA

High Court at Mombasa

Adoption Cause 1 of 2012

IN THE MATTER OF: CHILDREN'S ACT NO. 8 OF 2001

AND

IN THE MATTER OF: AN APPLICATION BY R.M. M. FOR AN ORDER OF ADOPTION

IN THE MATTER OF: ADOPTION OF M. A.M. M. alias baby I.A. N. (MINOR CHILD)

AND

R. M.M.....APPLICANT

RULING

The applicant R.M.M has filed this application seeking *inter alia* the following orders:

“(a) THAT the requirements of section

158(3)(a), 158(4)(a) of the Children’s Act be waived as provided for by section 159(1)(a) of the Act.

(b) THAT the applicant be authorized to

adopt baby I. A. N the

said child to be known as M.

A. M. M after the adoption.

(c) THAT the Registrar General be directed

to make in the adopted children’s

**register, an entry to the effect that**

**M.A.M.M is so adopted as per the particulars**

**of the adopted child.”**

The application was heard by this court by way of *vive voce* evidence.

The child in question is a girl child aged about two (2) years old. The said child was rescued by a good Samaritan who found her abandoned within [particulars withheld] Estate in Kisumu next to the fence of the Nyanza Provincial Hospital. The abandonment was reported to police in Kisumu. The child was later made a ward of court and was thereafter handed over to New Life Homes in Nairobi for care and custody. On 5<sup>th</sup> July, 2012 the court did approve one **H. M** as the guardian *ad litem* in this matter.

In her evidence the applicant told the court that she is a 44 year old Kenyan woman, who currently resides in [particulars withheld] Estate in Mombasa. The applicant's former husband a German national unfortunately passed away as a result of a road accident in Germany on [particulars withheld] leaving the applicant as a widow. She has not re-married to-date. The couple had one son called **B.B** now aged 16 years and is currently a student at [particulars withheld] in Mukumu in western Kenya. The applicant told the court that although she has one son she desires to raise another child. Due to medical complications she is unable to bear another child naturally and thus made the decision to adopt a child.

The pre-requisites for an application for adoption are to be found in section 156 of the Children's Act 2001 which provides:

**“156(1) No arrangement 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.”**

In this case the child was born in December, 2010. That means that she was aged about 1 year and 2 months by February, 2012 when this application was filed in court. The child was declared free for adoption vide a certificate No. [particulars withheld] dated 30<sup>th</sup> August, 2011 by the KKPI Adoption Agency. As such I am satisfied that this matter is properly before this court.

I have carefully perused and have given keen consideration to the report from the Adoption Agency as well as the Home Report prepared by the children's department. The reports are all favourable and indeed do recommend that the adoption proceed. I note that the applicant lives in her own four (4) bedroomed house which has adequate space and facilities to accommodate a growing child. In addition I do note that the applicant is self-employed and has a stable income. The annexed bank statements do persuade me that she is financially capable of meeting the educational and medical requirements for the child. In addition I did interview the applicant's 16 year old biological son. He told the court that he supported his mother's decision to adopt a child and had already welcomed her as a younger sister. Both the applicant and her son assured the court that they fully understood and accepted the legal implications which would flow from an order of adoption.

The child has lived in the applicant's home with effect from 9<sup>th</sup> September, 2011 under a Fostering Agreement. I did see the child in my chambers and observed that she was healthy and happy and had clearly bonded with the applicant's family. I find the applicant suitable and qualified to adopt this child.

In any matter or decision concerning the welfare of a child the Children's Act section 4(2) obliges the court to give priority to the '*best interest*' of the child. The applicant was a mature stable woman who struck me as genuine in her desire to give this child a home. The child was abandoned shortly after birth and faced a future in an institution. I have no doubt that the best interests of the child would be better served by allowing her to grow up in a safe and secure family environment with people who love her. I therefore find that this application for adoption does advance the best interests of this child and I do hereby allow the same in terms of prayers (b) and (c) thereof.

The child as stated earlier was abandoned by the parents who remain unknown to date. A police report dated [particulars withheld] from the Kisumu Police Station indicates that no person came forward to claim her (even to date) and police have exhausted all enquiries in the matter. As such there is no known relative from whom consent can be sought and/or obtained. As such I do hereby waive the requirements for consent in terms of section 159(1)(a) of the Children's Act. It is so ordered.

**Dated and delivered in Mombasa this 18<sup>th</sup> day of February, 2013.**

**M. ODERO**

**JUDGE**

In the presence of:

Mr. Muchiri for Applicant

Court Clerk Mutisya