



REPUBLIC OF KENYA

High Court at Mombasa

Adoption Cause 14 of 2012

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

IN THE MATTER OF: R.F (A MINOR)

AND

IN THE MATTER OF: APPLICATION FOR ADOPTION BY F.J.A

JUDGMENT

By way of this originating summons the Applicant **F.J.A** seeks the following orders:

- “1. That S.M of Post Office Box Number[PARTICULARS WITHHELD], Mombasa be appointed as a guardian *ad litem* in this case.**
- 2. That the Applicant be authorized to adopt R.F a minor.**
- 3. That the records at the Registrar of Births and Deaths be rectified and the minor herein be issued with a birth certificate in the name of M.N**

The summons was supported by the statement of the Applicant dated 27th September, 2012.

The applicant is a female adult Kenyan born in 1972 who is currently employed as an Administrator in M[...]. The subject child is a girl-child who was found abandoned at the age of about three (3) days, on the beach in (Name withheld) on 13th May, 2011. A good Samaritan who found the child in a waste basket at Bofa Beach took her to the (Name withheld) Police Station. The child was then handed over to the custody and care of (Name withheld) K[.....] in Kilifi. The applicant who was a regular visitor to the Children Home met and fell in love with the child. She then decided to adopt the child.

The law relating to the Adoption of a child is to be found in the Children Act 2001. Section 156(1) of the Children Act provides for the pre-requisites for adoption.

“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 in question having been born in May, 2011 was aged 1 ½ years by October, 2012 when this application was filed in court. She was well over the six (6) week age limit provided for in the Act. There is annexed to the application a copy of a certificate serial No.[...] dated 13th January, 2012 declaring this child free for Adoption issued by the Child Welfare Society of Kenya which is a registered adoption agency. As such I am satisfied that the prerequisites for adoption have been met.

The applicant did give oral evidence before me. She testified that she was a regular visitor to the Children's Home in whom the custody and care of this child had been vested. She met and grew an attachment to the child and formed a desire to adopt her and provide her with a home. The child was also presented before me in chambers. She was a healthy happy toddler who had clearly bonded with the applicant. The applicant works in a stable job as an administrator and earns a salary which I have no doubt will be sufficient to provide for the needs of the child. I have perused and considered the Home Report prepared by the Children's Department. It indicates that the applicant lives in a spacious, well appointed home in (Name withheld). She has sufficient room and facilities to take care of a growing child. In addition the home has running water and electricity thus hygiene will be properly catered for. In addition the applicant who was born a Muslim converted to Christianity in the year 2001. She is an active member of the (Name withheld) Chapel in Mombasa thus I have no doubt that the child will receive proper religious instruction.

Section 4(a) of the Children Act obliges a court to give priority to the '**best interests**' of a child in making any decision relating to that child. This is a child who was abandoned on the beach barely days after her birth. To date no person has come forward to claim her as confirmed in the letter dated 12th June, 2012 from the OCS (Name withheld). She faced an uncertain future in a Children's Home. The adoption if allowed will give this child an opportunity to be raised in a stable loving home environment. This adoption is certainly in her best interests.

Finally, I note that no consent can be sought from any person as the biological parents of the child remain unknown. No other relative has come forward to date to claim her. I therefore dispense with the requirement for consent in line with section 159(1)(a)(i) of the Children Act. This application succeeds and I hereby authorize the adoption of the child R.F (now to be known as M.N) by the applicant. The Registrar to make the relevant entry in the Adoption Register. No order on costs.

Dated and delivered in Mombasa this 29th day of April, 2013.

M. ODERO
JUDGE

In the presence of:
No appearance by Applicant
Court Clerk Mutisya