



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
ADOPTION CAUSE 51 OF 2011

IN THE MATTER OF AN APPLICATION FOR ADOPTION OF BABY M.W alias D.M

BY

C.W.R

JUDGEMENT

C.W (the Applicant) has applied to this court under Section 154 of the Children Act, Chapter 141 of the Laws of Kenya, for authority to adopt a child known as **Baby M.W** aged 9 years. The proposed adoption is a local one as opposed to an international adoption.

The Applicant is aged 52 years and has complied with the provisions of Section 158 of the Children Act. The child was declared free for adoption by Kenya Children's Home Adoption Society on 16.2.2010 and has been in the care, protection and control of the Applicant since 28th February 2002.

The child was born in January 2002 at Kiambu District Hospital to one M.W who absconded the same day leaving the child in plight. Efforts by the police at Kiambu to trace her were fruitless. The child was transferred to Nest Children's Home and the SPM Children's Court at Kiambu in Case No.P & C 3 of 2003 contains this record.

I have perused the application for adoption and the **reports** filed by the **Director of Children's Services** of the Ministry of Gender Children and Social Development as well as reports by the **guardian ad litem**, E.K and **Kenya Children's Home Adoption Society**, a registered adoption in Kenya.

The Applicant was born and brought up in Nyeri in a rural setting and was the second in a family of seven siblings. She got education up to High School and currently works as a messenger cum-tea-girl-cum-cleaner with (*particulars withheld*) where her main work is to distribute letters and to clean the offices in addition to making tea for staff. She lives in Nairobi, in a one bed roomed house which she has rented at Shs.3,000/= per month. The report by the Director of Children's Services shows that she has partitioned the room into two so as to accommodate a bed for the child she intends to adopt. Bathroom and toilet facilities are communal. The Director's report is mum about the Applicant's financial capability. However, **E.M.K**, the **Guardian ad litem** has filed an elaborate report that has been of tremendous assistance to the court in reaching a decision in this matter. Her report shows that the Applicant earns Shs.8,000/= per month. Although the living conditions of the Applicant and her salary seem modest and although one may be tempted to wonder whether the Applicant can manage to raise the child with such meager resources, it is plain to see that most Kenyans with larger families earn similar

salaries and still manage to raise and educate their children. The child's life among family who offer love and protection as well as education promises a better future than a life in an institution. Moreover, for close to ten years now, the Applicant has cared and nurtured the child who was an infant but is now aged 9 years. But it is not acceptable that a party should be allowed to take such an inordinately long period of fostering before seeking authority to adopt. But no matter. The child has bonded well with the Applicant and the latter's relatives whom the child sees and knows to be her family. The reports clearly show that the Applicant and the child are truly mother and son.

The Applicant is a widow. She got married in 1986 to one T.M who died in 1996 due to chronic ulcers. They were not blessed with a child. She has no intention of getting married and she is not in a relationship. The desire to have a family has been her motivation in this adoption application. At age 52 years, marriage is unlikely.

The Applicant has **appointed Mr. J.K and Mrs. A.W.K** as the **legal guardians to the child**. Both have accepted not only the role but also the responsibility to take care of the child in the event that the Applicant is unable to do so for whatever reason.

I have given due consideration to the Application and the submissions made by Advocate **V. S. Kimenyi** who represented the Applicant. I am satisfied that the provisions of the Children Act have been complied with. I am also satisfied that the adoption of the child by the Applicant will be in the best interest of the welfare of the child who will have a better future as a result. The Applicant's action is commendable not least because it is a contribution towards making the child a better person and hence improving Kenya.

Accordingly, **I allow the Application and grant the Applicant C.W, authority to adopt the child** to be known as M.R.M. Although the Applicant is a sole female Applicant seeking to adopt a male child contrary to Section 158(2)(b) of the Children Act, I am satisfied that the circumstances obtaining in this case justify the making of the adoption orders. For starters, the Applicant got the custody of the child when the child was an infant. She has cared for the child since. The child is now 9 years of age. He knows no other mother.

Accordingly, I make the following orders.

1. The Applicant, **C.W.R**, is hereby authorized to adopt the child known as **BABY M.W alias D.M**.
2. The child shall henceforth be known as **M.R.M**.
3. The consents of the child's biological parents are hereby dispensed with.
4. The date of birth of M.R.M is January 2002 and his place of birth is in Kiambu District Hospital, Kenya.
5. The Legal Guardians of the child are **J.K.R and H.W.G** (who shall step into the shoes of the Applicant in the unfortunate event that the Applicant is unable to shoulder parental responsibility).
6. The Registrar General shall make an entry of this Adoption in the **Adopted Children Register** in the prescribed form.
7. For the avoidance of doubt, it is herein declared that all rights, duties, obligations and liabilities of the biological parents or guardians of the child are extinguished and all such rights, duties, obligations and liabilities shall vest in and be exercised by and enforceable against the adopting parent namely, **C.W.R** as if the said child were her biological child and the child shall have the right to inherit the Applicant.

Dated at Milimani Law Courts, Nairobi, this 24TH day of May 2012.

G.B.M. KARIUKI, SC
JUDGE

COUNSEL APPEARING

Ms V.S. Kimenyi Advocate, of Rautta & Co. Advocates for the Applicant

Mr. Kugwa – Court Clerk