



REPUBLIC OF KENYA

High Court at Mombasa

Adoption Cause 5 of 2012

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

AND

IN THE MATTER OF: Baby N

**IN THE MATTER OF: APPLICATION FOR ORDERS OF ADOPTION OF THE MINOR BABY
N. BY I. N. K.**

JUDGEMENT

The Applicant herein **MS. I. N. K. M.** has filed this petition seeking to adopt **BABY N. aka P.M.** (hereinafter referred to as '*the child*'). The said petition was filed in court on 4th May 2012. On 17th July 2012 the matter was before court and one **J. M. M.** was approved as a guardian ad litem.

The law relating to Adoption is to be found in the Children Act of 2006. S. 156(1) of the said Act provides as follows:

“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 abandoned at Mathare Health Centre on 7th September 2010. Her actual date of birth is not known but at the time of abandonment the child was approximately six (6) months old. Her approximate date of birth was given as 7th March 2010. Therefore the child was well over six (6) weeks old when this petition to adopt was filed in May 2010. As such the provisions of Section 156(1) have been fully complied with. Similarly I find that the child has been declared free for adoption by a registered Adoption Society being the '**L.A.N**' vide their certificate No. 000929 dated 13th July 2011. Thus all the legal prerequisites for adoption have been fulfilled.

The Applicant who is a 32 year old single female businesswoman living and working in Mombasa gave oral evidence in support of her application to adopt the child. She told the court that she has no biological children of her own and due to previous medical complications is unlikely to bear a child. However she is desirous to have a child to call her own one who can share her home and her life. I have considered the evidence presented by the Applicant. I have also considered the reports filed by the L.A.N as well as the Children's Department. The Applicant is a mature woman of sound mind and with no criminal record. Like any woman she desires to have a child to call her own. The Applicant produced copies of her bank account held at Equity Bank Kengeleni Branch which shows that she is earning an

income sufficient to enable her cater for the needs of the child.

The Home Report indicates that upon the recommendation of the social workers the Applicant relocated from her previous cramped residence to more conducive hygienic and spacious living quarters in {particulars withheld}. This shows court that the Applicant was determined to do whatever it took to welcome the child into her home. The new accommodation was visited and found to have sufficient facilities and to be conducive to the raising of a young child.

By way of a Fostering Agreement made on 15th July 2011 the child was placed into the custody of the Applicant who has lived with her to date. I was able to observe the child during the hearing in court. I saw a healthy happy 2 year old child who had clearly bonded with the Applicant whom she referred to as '**Mama**'. I have no doubt that the child is receiving proper care and attention.

The Applicant did confirm to this court that she was fully aware and ready for all the legal obligations that would arise from an order of adoption upto and including the right of the child to inherit her wealth. The Applicant's biological mother **A. M.** did testify in this court on 25th October 2012. She informed the court that the whole family were fully aware of and supported the decision of the Applicant to adopt this child. She assured the court that the extended family were ready and willing to welcome this child as one of their own.

In any matters concerning children this court is obliged by S. 4(2) of the Children Act to put the **best interest of the child** as the paramount consideration. This is a scenario where the child was abandoned. Her parents are unknown. No person has come forward to claim her. At best the child faced a future living and being raised in a children's home. The adoption will provide for an opportunity for this child to grow up in a loving Christian home environment – this certainly serves the best interests of this child. As such I am persuaded of the merit of this application to adopt and I do hereby allow the same.

As stated earlier having been abandoned at a young age the parentage of the child is unknown. The Kasarani Police Station vide their letter dated 5th April 2011 have confirmed that they have exhausted all efforts to trace the biological parents of the child. As such there is no relative from whom consent for the adoption can be obtained. As such I do dispense with the provisions of S. 159 of the Children Act. Finally in conclusion I do hereby make the following orders:

- 1) The Applicant be and is hereby allowed to adopt the child Baby N.
- 2) The child shall henceforth be known as P. M.
- 3) The Registrar-General to make the appropriate entries in the Adoption Register.
- 4) No orders on costs.

Dated and Delivered in Mombasa this 6th day of December 2012.

M. ODERO

JUDGE

In the presence of:

Ms. Odhiang holding brief for Ms. Mutangili for Petitioner