



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Adoption Cause 170 & 171 of 2006

IN THE MATTER OF THE CHILDREN ACT, 2001

AND

IN THE MATTER OF F a.k.a. FKW (A CHILD)

CONSOLIDATED WITH

IN THE MATTER OF THE CHILDREN ACT, 2001 AND

IN THE MATTER OF JMKW (A CHILD)

JUDGMENT

By originating summons dated 23.10.06 and filed on 02.11.06 stated to be brought under sections 154 and 160 of the Children Act, No.8 of 2001, RMW of Post Office Box [PARTICULARS WITHHELD], Nairobi applied in Adoption Cause No.170 of 2006, *inter alia*, for the following substantive order, namely:-

THAT the applicant be authorized to adopt F a.k.a FKW, to retain the same name.

And by originating summons dated 01.10.06 and also filed on 02.11.06 stated to be brought under the same provisions as above, the same RMW applied in Adoption Cause No.171 of 2006, *inter alia*, for the following substantive order, namely:-

THAT the applicant be authorized to adopt JMKW, to retain the same name.

The applicant was represented by learned counsel, Miss A.N. Muniafu.

Salient facts pertaining to the applications may be summarized as under.

The applicant is a widow, her husband SWK having died on 16.01.05. The applicant got married to her late husband in 1988 under customary arrangements but the two were not blessed with biological children owing to some medical problems on the part of the applicant. The two of them decided to adopt the children in the present two cases but the applicant's husband died before the adoption arrangements got formally underway. The applicant, however, decided to pursue the adoption arrangements to their logical conclusion, hence the present applications, which were consolidated on 08.12.06.

The applicant was born on 27.07.70 and is aged around 37 years. The child Fa.k.a. FKW in Adoption Cause No.170 of 2006 was, according to the Child Welfare Society of Kenya report dated 06.12.06, born on 29.06.03 and is aged around 4 years. The child JMKW in Adoption Cause No.171 of 2006 was, according to the Child Welfare Society of Kenya report also dated 06.12.06, born on 06.03.01 and is aged around 6 years 4 months. Section 158 (1) (a) of the Children Act is to the effect that for the applicant to qualify as an adoptive parent, she has to have attained the age of 25 years and be at least 21 years older than the child but should not have attained the age of 65 years. Those statutory age requirements have been met.

The applicant is a businesswoman. She sells clothes at Gikomba Market in Nairobi from which business she makes about Kshs.50,000/= per week; she owns a hotel at Ol Donyo Sabuk which fetches about Kshs.3,000/= per month; operates a taxi from Buruburu Shopping Centre, Nairobi which fetches about Kshs.7,000/= per week; has 3 acres of farmland at Tala where she has her home and cultivates food crops; has 3 acres of farmland at Yatta; and has a ¼ acre residential plot at Ruai.

Both children to be adopted are abandoned children and have remained unclaimed:-

- a) F a.k.a. F KW was abandoned at Kenyatta National Hospital, Nairobi after birth or shortly thereafter. The matter was reported to the Police. Later the child was taken to Missionaries of Charity in Huruma, Nairobi where she was fostered until 10.03.06 when the applicant took custody of the child and has fostered the said child ever since.
- b) JMKW was abandoned at Mathare area, Nairobi after birth or shortly thereafter. The matter was reported to the Police. Later this child was also taken to Missionaries of Charity in Huruma, Nairobi where he was fostered until 27.01.06 when the applicant took custody of the child and has fostered the said child ever since.

The Child Welfare Society of Kenya, a registered adoption society in Kenya, has declared the child free for adoption as required by law.

The guardian *ad litem*, BM has in his report dated 09.07.07 recommended the proposed adoptions.

The Director, Children's Services has in his reports dated 03.05.07 recorded that bonding has taken place between both children and the applicant as well as between the children themselves, who treat each other as sister and brother. The Director has, quite properly, drawn attention to the fact that while no technical problem arises about the applicant, a sole female applicant, adopting the female child F a.k.a. FKW, he (Director) has pointed out that a technical problem arises under section 158 (2) (b) of the Children Act about the applicant adopting the male child JMKW. The Director, Children's Services has nevertheless recommended both proposed adoptions.

Section 158 (2) (b) of the Children Act provides as follows:

'158. (2) an Adoption order shall not be made in favour of the following persons unless the court is satisfied that there are special circumstances that justify the making of an adoption order –

(b) a sole female applicant in respect of a male child'.

There are twin special circumstances in respect of the applicant's proposed adoption of the male child JMKW: Firstly, the proposed adoption of this child was initiated by the applicant and her husband but unfortunately the husband died before the adoption arrangements formally got underway. Secondly, the applicant wants to adopt this male child concurrently with her adoption of the female child F a.k.a. FKW. The applicant has been fostering the two children together since 2006 and the children have been growing up under the applicant's custody and care as siblings. I am satisfied that these factors are special circumstances within the meaning of section 158 (2) of the Children Act and that the applicant's proposed adoption of JMKW does not in the foregoing circumstances contravene the law.

The applicant is a resourceful and successful businesswoman. She has commensurate financial means to cater adequately for the needs of both children. The applicant was questioned by the representative of the Director of Children's Services who interviewed her about inheritance rights of the children. She indicated she has no objection to the two children having inheritance right to her estate and indeed cited 'getting an heir as one (of) the reasons for the proposed adoption(s).'

I am satisfied on evidence tendered before court that the applicant meets the legal requirements and social parameters for an adoptive parent; that the applicant is a fit and proper person to adopt the two children; and that it is in the children's best interests to be adopted by the applicant. According to the reports of the Child Welfare Society of Kenya, the natural mother of Fa.k.a. FKW is FWW while the natural mother of JMKW is unknown. The biological fathers of both children are unknown. Since the biological parents of the two children have not laid claim to the children for over 6 months, I dispense with their consent to the proposed adoptions. Accordingly, I make orders under section 154 (1) of the Children Act, 2001 authorising the applicant, RMW:-

1. To adopt F a.k.a. FKW who shall retain the same name
2. To adopt JMKW who shall retain the same name.

The Registrar-General is directed to make appropriate entries in the Adopted Children Register as required by law.

Orders accordingly.

Delivered at Nairobi this 27th day of July, 2007.

B.P. KUBO

JUDGE