



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Adoption Cause 34 of 2006
IN THE MATTER OF THE CHILDREN ACT, 2001
AND
IN THE MATTER OF MF (A CHILD)
JUDGMENT

By originating summons dated 13th March, 2006 and filed on 15th March, 2006, Ms. MFB of *[particulars withheld]*, NAIROBI, KENYA applied, *inter alia*, for the following orders:-

- a) That the applicant be authorized to adopt MF(child).
- b) That upon adoption the child be known as MF

The applicant was represented in the adoption proceedings by Miss N.M. Kilonzo.

The application is stated to be brought under section 154, 156 (1), 157 (1), 158 (1) (b), (2) (d), 159 (1) (c), (4), 160 (1), (2), (4), 163 (1) and 170 (1) of the Children Act, 2001 and also under section 24 of the Interpretation and General Provisions Act, Cap. 2 of the Laws of Kenya.

The salient facts pertaining to the application may be summarized as under.

The applicant is an Ethiopian national who has lived in Kenya since 1985. She is a fashion designer in Nairobi and her designing business generates income of between Kshs.80,000/= and Kshs.100,000/= per month. She owns a 25 – seater *matatu* (mini bus) operating within Nairobi which earns her approximately Kshs.50,000/= per month. She stays in a 3 – bedroom house at Ngumo Estate, Nairobi for which she pays rent of Kshs.22,000/= per month. She owns a Toyota Saloon car and runs a current account with Barclays Bank worth Kshs.634,155/55 as at 5th June, 2006. She is aged 43 years, is single and has no child of her own. She professes the Christian faith.

In her statement dated 13th March, 2006 in support of the adoption application, accompanied by the requisite supporting affidavit, the applicant has stated that the child's mother, AFS was her sister and that she died on 16th November, 2002 of breast cancer after giving birth to the child. There is medical evidence to that effect relating to the child's mother's death. The child herself was born at the Aga Khan Hospital, Nairobi, Kenya on 12th September, 1997 and is now aged around 9 years. The applicant is the child's maternal aunt and has had custody and care of the child since birth since her mother was

diagnosed with breast cancer immediately she gave birth to the child. The applicant has continued to foster and provide for the child after her mother's death.

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 65 years. The statutory age requirements have been met in this case.

The child's mother, who was also single, never disclosed the identity of the child's father and the said father has never come forward either to support or claim the child. For that reason the court has been asked to dispense with such father's consent to the proposed adoption. I dispense with such consent as I am authorized so to do by law. On the other hand, the applicant's father, FB of P.O. Box No. **[particulars withheld]**, Addis Ababa, Ehtiopia has given his written consent to the proposed adoption. The applicant's sister, MFB also of P.O. Box **[particulars withheld]**, Addis Ababa, Ethiopia has signified in writing that she has no objection to the proposed adoption.

HKN and RMK of P.O. Box **[particulars withheld]** Nairobi have offered to be legal guardians of the child in the event of death or in capacity of the applicant before the child attains majority age.

Kenya Christian Homes, a registered adoption society in Kenya has declared the child free for adoption as required by section 159 (a) of the Children Act.

PNP of P.O. Box No. **[particulars withheld]** , Nairobi has, as guardian *ad litem* of the child, recommended the proposed adoption.

Kenya's Director of Children's Services has vide his report dated 19th July, 2006 also recommended the proposed adoption.

The child to be adopted is female and the applicant is her maternal aunt. To all intents and purposes the applicant has acted as the child's mother since the child was born. The child is technically an orphan, her biological father being unknown and her biological mother having died. The applicant has the necessary means to continue taking care of the child. The applicant has won a lottery to go and live in the United States of America and it is her wish to take the child along with her as her formally adopted child.

I find the proposed adoption to be within family circles and that it is in the child's best interests to be adopted by the applicant. All legal requirements and social parameters have been met in this case. For all practical purposes, this is a local adoption. Accordingly, I hereby make an adoption order pursuant to section 154 (1) of the Children Act, 2001 authorizing the applicant, MFB to adopt the child, MF who shall retain the name MF. The Registrar – General, Kenya is directed to make appropriate entries in the Adopted Children Register as required by law.

Orders accordingly.

Delivered at Nairobi this 19th day of September, 2006.

B. P. KUBO

JUDGE