



**IN THE MATTER OF THE CHILDREN ACT, 2001**

**AND**

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI (NAIROBI LAW COURTS)**

**Adoption Cause 79 of 2005 (OS)**

**IN THE MATTER OF BABY MK (A CHILD)**

**JUDGMENT**

By originating summons dated 14.06.05 and filed on 18.06.05 brought under sections 154, 156 (1), 157 (1), 158 (1) (a), (4) (a), 159 (4), (6), (7), 8 (a), 160 (1), (2), (4), 163, 164 (1) and 170 of the Children Act, 2001, DR NRM of P.O. Box [particulars withheld], Nairobi, Kenya applied, *inter alia*, for the following substantive order, namely:-

That the applicant be authorized to adopt BABY MK to be known as KSM.

The applicant was represented in these proceedings by learned counsel, Miss L.W. Kigwatha.

The applicant, a female Kenyan, is a Medical Doctor at Kenyatta National, Hospital, Nairobi. She is aged about 43 years and single. She has no biological child. The child to be adopted is also female and presumed to be Kenyan, aged about 5 years. 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. The age requirements have been met in this case.

Documents in the court file establish that on 02.02.01 the child, who had been found abandoned, was taken by members of the public to Dandora Police Post. Police Constable Jacinta Kimungi handed the child over to Thomas Bernados House, Nairobi, which is reported to be under Kenya Christian Homes, for temporary care while awaiting a claim to be lodged over the child by her mother or father. A letter dated 07.10.05 written for the Provincial Children's Officer, Nairobi to the Director, Children's Services, Kenya records that the child was not claimed and had consequently been referred to New Life Children's Home for care and protection. Documents in the file include an order by the Senior Resident Magistrates Children's Court, Nairobi issued on 21.09.05 committing the child to the care and custody of NEW LIFE HOME TRUST. A written consent given by the Director, New Life Homes on 15.06.05 confirms that New Life Homes as custodians of the child have no objection to the child being adopted.

The applicant has had custody, care and control of the child since 27.05.01 and good bonding between the applicant and the child is reported to have taken place. In the applicant's oral testimony before this court at the hearing of her adoption application on 29.09.06, the applicant told this court that she has always wanted to be a mother. However, marriage is not within her plans and she desires to attain motherhood status through the adoption process. Kenyatta National Hospital pays her a monthly salary of Kshs.100,000/=. Additionally, she has been doing research work since 1998 and that research works earns her another Kshs.200,000/= per month. She can comfortably take care of her own needs and the needs of the subject child.

Dr WW, also a Medical Doctor and Lecturer at the University of Nairobi Medical School acted as *guardian ad litem* for the child. She filed a report dated 18.08.06 on 06.09.06 recommending the proposed adoption.

LWM, a sister of the applicant has filed her written consent dated 14.06.05 to act as legal guardian of the child in the event of death or other incapacity of the applicant before the child is of majority age and self-reliant.

The child Welfare Society of Kenya, a registered adoption society in Kenya, has declared the child free for adoption under section 159 (1) (a) (ii) on account of the child's biological parents failure to maintain the child. As the evidence tendered in this case clearly establishes that neither the biological parents nor any close relatives of the child have shown interest in and claimed the child, I dispense with their consent to the proposed adoption of the child as I am empowered so to do under section 159 (1) (a) of the Children Act.

The Director, Children's Services has vide his report dated 04.07.06 and filed on 05.07.06 recommended the proposed adoption.

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 child; and that it is in the child's best interests to be adopted by the applicant. Accordingly, I hereby make an order pursuant to section 154 (1) of the Children Act, 2001 authorising the applicant, DR NRM to adopt BABY MK who shall henceforth be known as KSM. The Registrar-General, Kenya is directed to make appropriate entries in the Adopted Children Registrar as required by law.

Orders accordingly.

**Delivered at Nairobi this 27<sup>th</sup> day of October, 2006.**

B.P. KUBO

JUDGE