



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ADOPTION CAUSE NO. 27 OF 2002

IN THE MATTER OF BABY I (INFANT)

R U L I N G

By and originating summons dated 6th June, 2002, the applicant GS Sought the court's authority to adopt the infant herein. There was also a prayer for consent both from the infants natural mother and Mama Ngina Children's Home, where the infant has been since December, 2001. Finally was a prayer for appointment of a "Guardian ad Litem".

I first dealt with the application for consent of Mama Ngina Children's Home, and to that effect, I recorded evidence from K M, an official from the home who gave me a brief history of the infant. Apart from that, were annexed documents, i.e. letters from Mama Ngina Children's Home expressing the interest the applicant has in the infant despite having been diagnosed with "sickle cell anemia" and bronchitis, at some point. Several letters were written to the Executive Director of the home by the Chairman of the home when at some point he withdrew the infant from the applicant who is the foster care parent.

This morning in court, Kiambi Marete confirmed as follows:-

"Mama Ngina Children's Home does formally give consent to the adoption of this baby".

I was addressed by Mr. Miller about the facts and circumstances of natural mother. Her affidavit and the form of consent she signed are in the court file. She signed the form to give up her child for adoption, and this is reflected in her affidavit. From that evidence, I dispensed with the consent of the natural mother as she had freely given up the infant for adoption.

I then went through the procedure of the appointment of the "legal guardian". The proposed guardian was present in court and I conducted a hearing where I put several questions to her as the record shows. From her answers I was satisfied that she was a fit and proper person to be appointed "a guardian ad litem" to the infant. I exercised a discretion and accepted an affidavit she had filed before appointment. I did this because I had dispensed with the consent of the natural mother for reasons I gave and I also had consent of Mama Ngina Children's home, where the infant came from.

Finally was the adoption application itself, where I recorded evidence on oath from the applicant G S, a single woman, but engaged to be married in the near future.

G first saw the infant in February, 2002 when she visited Mama Ngina Children's Home and she liked him, and thereafter visited him several times. She became convinced that this was the baby she wanted to adopt and the home allowed her to sign a foster care agreement. From then on, she became a foster mother to the infant.

G who presently works and lives in New York, returned to Kenya to April, 2002 and continued fostering the infant to date. She stated that in February 2002, the infant was tested and found to be well

but by April, 2002 he had not been keeping good health and when G took him for medical test, he was diagnosed to have “sickle cell anemia”.

This was devastating, but G took it in her stride, and according to her, this even made her love the infant more as she realized that he now needed help and support from somebody who loves and cares for him.

G has continued to love and foster the infant who is now aged about 15 months and has not started walking due, most likely to the complications caused of sickle cell anemia. She has nevertheless obtained the services of a physiotherapy who in twice a week. She identified a Doctor for the infant, and he examines and treats him on a weekly basis.

G asked the court to allow her to adopt the infant and also allow her to take him out of jurisdiction. She hopes that in future, she might get a position and return to live and work herein Kenya. She works for the United Nations (UNDP).

G employed a nanny for the infant as soon as she signed the foster care agreement, and also started paying for the expenses of the infant at Mama Ngina Children’s home.

I examined her about her capability to look after the infant and she assured me that she has a good salary which is shown in her affidavit. Besides, she is preparing to buy a house in which she will live with the infant back in New York, if the adoption is allowed.

I have considered G’s evidence given on oath in court. I have also considered her averments in her application for adoption. From what I saw and heard of G in court, I am convinced that she loves this baby. I was struck by the sacrifice she has made and still willing to make on behalf of this infant. I believe that this can only be coming from the love of her heart. Though she has never been a mother to a baby of her own, she impressed me as having adjusted very well, when she made up her mind to adopt this baby. I find that G has become a mother to this infant. There is a strong bond between them, may be due to what she told me on oath, i.e. that there is something about this infant that reminds her of her father. That is a very natural feeling. G has 3 other sisters and according to her, the one in Washington D.C would be ready to be a guardian to this child. Though her mother is old, 80 years old, she has been made aware by G of her intention to adopt the infant.

The infant is not well as both the record and evidence show, yet G has not been put off by this. She has even loved him the more. I have never know such dedication as the one G has towards this baby. I am convinced that this baby is special to her, and given the medical condition and general welfare of this baby, adoption will surely be in his best interest.

I therefore make an order authorizing G S to adopt the infant who will from today on be known as TCS. Further, I authorize G to remove the baby from the jurisdiction of the court to her home in New York, upon adoption.

Dated at Nairobi this 14th day of June, 2002.

JOYCE ALUOCH

HIGH COURT JUDGE