



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

ADOPTION 13 OF 2018

IN THE MATTER OF BABY VNM Alias MM.

VAO.....APPLICANT

A N D

LITTLE ANGELS NETWORK.....RESPONDENTS

JUDGMENT

1 Vide an originating summons dated 18th July, 2018 and filed on 20th July 2018, VAO herein referred to as the applicant, moved this court for orders that; **Baby VNM Alias MM be declared a Kenyan citizen; The court to dispense with consent pursuant to Section 159 of the children Act; She be authorized to adopt the baby herein; Upon adoption the child, be known as VNO and, the Registrar General to enter the adoption in the adopted children's register.**

2 The application is grounded on a statement of particulars executed by the applicant on 18th July, 2018 in which she averred that she is a single lady with no biological child. In terms of age, she is 38 years old. Economically, the applicant is a business lady engaged in small business among them; operating a boutique, Vivi wears shop, engaged in tenders and offering car hire services.

3 Her motivation to adopt the child is borne out of the urge to make a difference in a child's life by providing a home as well as having a heirless to her property.

4 Regarding the minor herein, she was born on 21st October, 2016. Two days after delivery, the mother absconded from Coast General Hospital where she had delivered the baby thus abandoning her. Vide a letter dated 22nd November 2016, Coast Provincial General Hospital reported the incident to the Sub County Children Officer confirming the case of child abandonment.

5 In the said letter, it was revealed that the mother had disclosed and indeed expressed her intention of abandoning the child because she was a student at a Nairobi college hence did not want her parents to know. Despite having been Counselling by nurses to voluntarily give out the baby for adoption, she never heeded to the advice and instead chose to abscond on 26th November 2016.

6 A report was subsequently made to Makupa police station vide OB No.48/22/11/2016 by the children department who commenced investigations. Admission for protection and care of the minor was sought at Baby Life rescue Center Mombasa by the Mvita Children's Officer. The child was admitted into the said institution on 2nd December, 2016.

7 On 2nd June 2017, the child was presented before Tononoka Children's court which made a formal committal order vide Protection and Care Case No 302/2017. Despite every effort by the police to trace the mother or close relatives to the baby, nobody has turned up. This is evidenced from the police final letter dated 2nd June, 2017.

8 The child having remained unclaimed for over a period of 6 months, she was declared free for adoption by Little Angels Network Services through their case committee meeting held on 1st September, 2017. A certificate S/No. 001898 to declare the child free for adoption was issued.

9 Subsequently, the suit herein was filed. Vide a chamber summons dated 29th January, 2017 and amended on 29th January 2020, LAK was appointed as guardian Ad litem. Consequently, the Director Children Services and the guardian Ad litem were directed to file an evaluation report within 14 days.

10 Prior to the hearing, the Director Children Services filed an assessment and evaluation report dated 9th January 2017 thus recommending

the adoption. The guardian Ad litem also filed hers on 27th November 2017 approving the adoption. Equally, Little Angles network recommended the adoption through their report dated 17th July, 2017. In all the reports, the applicant was described as financially stable, reasonable, morally upright, a Christian with no criminal record, and mentally and physically fit.

11 During the hearing, the applicant urged the court to grant her prayers. She appreciated the importance and consequences of adoption and that it is permanent.

12 I have considered the application herein, affidavit and materials in support. Issues for determination are;

- a. Whether the child is available for adoption;**
- b. Whether the applicant is suitable to adopt the baby;**
- c. Whether the adoption is in the best interests of the child.**

13 The baby herein was abandoned at Coast General Hospital by the mother two days after delivery. Despite every effort to trace the mother and relatives said to be from Kandara Murang'a, nothing fruitful was forthcoming. In their final letter dated 2nd December, Makupa police station confirmed they were unable to find the mother to the baby or any close relative. To date, nobody has turned up to claim the baby.

14 The child was declared free for adoption and then placed under the care and control of the applicant to bond. Since there is nobody claiming the child, consent is dispensed with pursuant to Section 159 of the Children Act. Regarding the issue of citizenship of the minor, Article 14 (4) of the Constitution is available by recognizing any child below 8 years who is found in Kenya whether born in Kenya or not to be a Kenyan citizen. Accordingly, the child herein having been abandoned in Coast General Hospital is presumed to be a Kenyan citizen.

15 Pursuant to Section 157 of the children Act, the baby being a resident in Kenya is eligible for adoption. In terms of age, she is above six weeks and below 18 years thus satisfying the age bracket for a child sought to be adopted. Accordingly, it is my finding that the child is available for adoption.

16 Concerning the suitability of the applicant, she is a Kenyan citizen. She is above 25 years and below 65 years being the age bracket for an adoptive parent pursuant to Section 158 of the Children Act. She has been described as being stable financially, responsible and loving.

17 During the hearing, she appeared to have bonded with the baby who kept calling her as mom. She understands the consequences of adoption. This being a local adoption, I have no doubt in my mind that she is fit to adopt the baby.

18 As regards the question whether the adoption is in the best interests of the child, the court is alive to the paramount principle under Article 53 (2) of the Constitution which stipulates that in every decision made affecting the welfare of a child the best interests of a child must be taken into account. This constitutional underpinning is further fortified by Section 4 (2) and (3) of the Children Act.

19 The child herein was abandoned and nobody has come forth to claim her. she needs somewhere to call home. She needs care and love besides mentorship, and parental guidance. Further, the child like any other normal person needs provision of basic necessities like food, clothing, education, medical care and shelter all of which are now available in the hands of the applicant.

20 Accordingly, I am satisfied that the application herein is merited and the adoption is in the best interests of the child. To that extent, the adoption application is allowed with orders that;

- a. The applicant is authorized to adopt baby VNM alias MM who henceforth shall be known as VNO**
- b. The child's date of birth shall be 24th October 2016 and place of birth Mombasa**
- c. Consent of the biological parents is dispensed with**
- d. The child is declared as a Kenyan citizen**
- e. That the Registrar General shall enter the adoption on the adopted children's register**
- f. The guardian Ad litem is hereby discharged.**
- g. That Jane MA and IOO are approved as legal guardians in the event of any eventually befalling the applicant.**

DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 12TH DAY OF MARCH 2021

J. N. ONYIEGO

JUDGE