



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

ADOPTION CAUSE NO. 14 OF 2018

IN THE MATTER OF: THE CHILDREN ACT 2001

AND

IN THE MATTER OF: BABY MEO ALIAS TSJ

IN THE MATTER OF: AN APPLICATION FOR ORDERS OF ADOPTION OF BABY MEO ALIAS TSJ BY GAW

BETWEEN

GAW.....APPLICANT

AND

LITTLE ANGELS NETWORK.....RESPONDENT

JUDGMENT

1. By an originating summons dated 13th July, 2018, GAW hereinafter referred to as the Applicant moved this court pursuant to Sections 11, 156, 157, 159, 160, 161, 163, 164 and 170 of the Children's Act and Article 1454, of the Constitution seeking orders; ***that baby MEO alias TSJ be declared a Kenyan Citizen; that consent to adopt the baby be dispensed with; that GAW be authorized to adopt baby MEO alias JMJ; that upon adoption LD and GAE be appointed legal guardians of the child in case of any eventuality befalling the applicant and; that upon grant of the adoption order, the same be entered in the register of adopted children by the Registrar General.***

2. The application is grounded upon an affidavit sworn on 13th July, 2018 by the applicant. The applicant is a Kenyan citizen born on 5th May, 1970. She is single with no biological child. She has however adopted a child by the name of ADF whose adoption was granted on 1st December, 2016 vide certificate of entry No. ACR [...] serial No. [...]. Her desire to adopt the baby has been prompted by the urge to give back to society having been brought up by a step mother now deceased.

3. In terms of occupation, she is currently working as a stock controller at [Particulars withheld]. Her monthly salary is estimated at kshs 50,000/=. Besides, she owns transport business in operating Tuk Tuks and car hire which generates about kshs100,000 per month.

4. Regarding the child, he was born on 10th January, 2018 at Vihiga County Referral hospital. His biological parents MI a 17year old girl and CJ a 14year old boy are close relatives. That according to the community customs and practices, such a child cannot be raised within the community.

5. On 15th January 2018, MI and CJ's family approached Little Angels Network Kisumu Office seeking help to surrender the child for adoption as he was born out of an incestuous relationship. Subsequently, MI and CJ signed an initial consent dated 25th January, 2018 thus surrendering the child willingly for placement in a children's home for adoption.

6. Consequently, the child was placed at Springs of Life Children's home on 15th January, 2018. On 28th February, 2018 EJO the child's maternal grandmother and EMJ the child's paternal grandfather signed a legal consent which was attested before an advocate one Peter Samuel Onyango after understanding the explanatory memorandum. The baby was subsequently committed to Springs of life children's home on 23rd February, 2018 vide Protection and care case No. [...].

7. Vide a case committee meeting held by little Angels network on 9th March, 2018 the child was declared free for adoption and a certificate serial No. [...] issued. The child was eventually placed under the care and control of the Applicant for a mandatory three consecutive

month's period pursuant to Section 157(2) of the Children's Act.

8. Upon instituting these adoption proceedings, the court appointed SMM as a guardian ad Litem on 3rd April, 2019. The court further ordered the Director, Children Services to file an evaluation report before the hearing date.

9. Prior to the hearing, the County Children coordinator filed his report dated 24th August 2020 recommending the adoption. The guardian ad Litem equally filed his report on 13th March 2020 thus recommending the adoption. The Little Angels Network further filed their report dated 9th March, 2018 also supporting the adoption. The said reports described the applicant as financially stable, a Christian with no criminal record, responsible, caring and mentally and physically fit.

10. During the hearing, the applicant pleaded with the court to grant her application. She acknowledged having understood the consequences of adoption and that the same is permanent.

11. I have considered the application herein, materials in support and testimony by the applicant. The minor herein was born out of wedlock and in an incestuous relationship. The biological parents both under age children together with their parents voluntarily surrendered the child to the children's home for adoption. This was necessitated by the fact that their community's customs do not allow such a child to be brought up within the community hence a taboo. Necessary consents were granted pursuant to Section 156 of the Children's Act.

12. The child is a Kenyan citizen so is the applicant. With that in mind, the adoption is classified as a local adoption. The baby is above six weeks and below 18 years hence qualified for adoption pursuant to Section 156 of the Children Act.

13. On the other hand, the adoptive parent is above 25 years and below 65 years thus satisfying the age bracket for an adoptive parent in compliance with Section 158 of the Children Act. The applicant has already adopted another child a female thus qualifying the requirement that a female applicant should not adopt a child of the opposite sex (male). That requirement is settled by the existence of the adopted female baby.

14. Concerning the applicant's suitability, she is economically well endowed earning about Kshs 200,000/= per month out of employment and business. With this financial base, the child is assured of basic provision like food, shelter, clothing, medical care and education. The child has fully integrated with the applicant and the other adopted child thus providing good company for the minor.

15. It will not be in the best interest of the child to separate him from the adoptive family which has fully bonded with him. The baby has somewhere to call home having been rejected by the community as a bad omen.

16. Pursuant to Article 53 (2) of the Constitution and Section 4 (2) and (3) of the Children's Act, the best interests of a child's principle shall abide. This court is duty bound to ensure that the best interests of a child principle is upheld in this case. The child is assured of basic provision, mentorship, generational identity, psychological and emotional parental guidance and above all property, to inherit.

17. Accordingly, I am satisfied that the Application herein is merited and same is allowed with orders that: -

(1) The applicant GAW is hereby authorized to adopt baby MEO alias TSJ who henceforth shall be known as TSJ.

(2) The child's date of birth shall be 10th January, 2018 and place of birth Vihiga Kenya.

(3) That the Registrar General shall enter the adoption herein into the adopted children's register.

(4) The guardian ad litem is discharged.

(5) LD and GAE are appointed as legal guardians to the minor in the event the applicant dies or gets incapacitated.

DATED, SIGNED AND DELIVERED AT MOMBASA VIRTUALLY ON THIS 4TH DAY OF MARCH 2021.

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J.N. ONYIEGO

JUDGE