



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

ADOPTION CASE NO. 8 OF 2019

IN THE MATTER OF ADOPTION OF BABY C M aka S

LCC.....APPLICANT

VERSUS

CHILD WELFARE SOCIETY OF KENYA.....RESPONDENT

JUDGMENT

1. LC (hereinafter the applicant) moved to this court vide an Originating Summons dated 25th April, 2019 seeking orders that; the respondent to provide a home study report and certificate to declare the child herein free for adoption; EC be appointed guardian Ad litem in this case; She be authorized to adopt baby CM (minor); the name of CM to change to SAC upon adoption; baby CM be declared a Kenyan citizen; the children officer to write a social inquiry report; the Registrar General be directed to enter the name of the child in the adopted children's register in the prescribed form.

2. The application is supported by the averments contained in the statement of particulars dated 25th April, 2019. The applicant is an adult Kenyan citizen born in 1976. She is a single lady who has never been married. She does not have any biological or adopted child. However, her desire is to have a child to adopt to cure her loneliness and disappointment, to have a companion and have an opportunity to parent. Regarding her occupation, she is a clerical officer working at Kenya Ports Authority.

3. Concerning the baby, she was abandoned by her mother known as CM immediately after delivery at Lady Grigg Maternity Hospital (Coast General Hospital). That the said Catherine gave birth on 27th December, 2013 and immediately disappeared. Having not given any close relatives' contacts or details, the social worker in the hospital was not able to get any close relative to assist in tracing the mother.

4. Consequently, a report was made at Makupa police station vide OB NO. XXXXX/2014. Thereafter, the child was discharged and later admitted at Child Welfare Society at Mji Salama on 31st January, 2014. She was formally committed in the same institution by Tononoka children's court vide P&C case No 71/2014.

5. Every effort by the police Makupa police station to trace the parents and or close relatives did not bear positive results. This is evidenced by the police initial letter dated 10th July, 2014 and final letter dated 5th March, 2015. The Child Welfare Society of Kenya also attempted to trace the relatives to the baby but to no avail. They even circulated the incident in both the Taifa Leo, Sunday Nation and Standard newspapers of 17th August, 2014, 10th May, 2015 and 28th June, 2015 respectively. Having remained unclaimed for over six months, the adoption process commenced. The baby was declared free for adoption by the Child Welfare Society of Kenya on 25th March, 2014. A certificate S/No 0896 was therefore issued on 27th August, 2019.

6. The child was subsequently placed under the care and control of the applicant for the mandatory three months continuous period pursuant to Section 157 of the Children Act.

7. Upon institution of these proceedings, EC was appointed as guardian Ad litem on 17th March, 20121. The Director Children Services and the guardian Ad litem were directed to file their respective social inquiry reports.

8. Prior to the hearing, the Director Children Services filed his report on 16th March, 2021, thus approving the adoption. The guardian Ad litem also filed her report dated 16th March, 2021 also recommending the adoption. The child Welfare Society of Kenya recommended the adoption as well through their report dated 16th September, 2019.

9. During the hearing, the applicant pleaded with the court to allow the application. She expressed her love for the baby and that she

understood the consequences of adoption and that it was a permanent process. She also acknowledged that she will treat the baby like her biological child and that she will have the right to inherit her property.

10. Having considered the summons herein, materials in support, various stake holder's reports and testimony by witnesses, I am left with the onerous duty to ascertain whether the child is legally available for adoption; whether the adoptive mother is fit to adopt the baby and, whether the adoption is in the best interests of the child.

11. The child herein was abandoned in a medical facility by the mother immediately after delivery. Every effort to trace the mother and or close relative/s was futile. This is confirmed from the aforesaid police initial and final letters stating that nobody has ever come forward to claim the baby. In the circumstances, the requirement for consent under Sections 158 and 159 of the Children Act is dispensed with.

12. As regards the minor's national status, Article 14 (4) of the Constitution is available in her favour. That provision recognizes as Kenyan citizen any child below 8 years who is found within Kenya and whose nationality or parent is not known. Concerning eligibility for adoption, any child who is resident within Kenya whether born or not in Kenya is available for adoption in compliance with Section 157 of the Children Act.

13. Having been declared free for adoption and thereafter placed under the care and control of the applicant, I am satisfied that the child is suitable for adoption. Touching on the applicant's suitability, she is a Kenyan citizen thus qualifying the adoption herein to be a local one. She is aged 45 years now hence satisfying the age limit of not being less than 25 years nor over 65 years pursuant to Section 158 of the Children Act.

14. According to the various stake holders' reports, she is financially stable earning Kshs 106,000 a month, owns 0.2 Ha of land in Kericho and has a plot with 7 bedroomed bungalow plus two cars. She is a christian with no criminal record, loving and caring, mentally and physically fit. The child has fully integrated with the adoptive mother. I have no reason to doubt the applicant is suitable to adopt the baby.

15. As to the question whether the adoption is in the best interests of the child, the court is enjoined to take into account the best interests of the child principle as the primary consideration before making any decision concerning a baby pursuant to Article 53(2) of the Constitution and Section (2) and (3) of the children Act.

16. In the instant case, the child was abandoned in a medical facility. Nobody has come forward to claim her. Since placement in 2014 to date, she has fully bonded with the applicant and her extended family. It will not be fair to separate her by returning her to the children's home. She has found a home and a place of belonging with basic provision like shelter, food, education, clothing, parental love and guidance.

17. By all means, the best interests of the child will be served by allowing this summons. Accordingly, the application is allowed with orders;

(a) that the applicant is allowed to adopt baby C M who thereafter shall be known as SAC

(b) that her date of birth shall be 27th December, 2013 and place of birth Mombasa.

(c) that the consent of the biological parents or guardian is dispensed with.

(d) that the child is declared a Kenyan citizen.

(e) that the guardian Ad litem is discharged.

(f) that the Registrar General is directed to enter the adoption in the adopted children's register

(g) that DC is appointed as the legal guardian of the baby in the event of any eventuality befalling the applicant.

Dated, signed and delivered virtually at Mombasa this 18th day of May, 2021.

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J. N. ONYIEGO

JUDGE