



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

ADOPTION CAUSE NO.2 OF 2020

IN THE MATTER OF: THE CHILDREN ACT 2001

AND

IN THE MATTER OF: AN ADOPTION OF BABY RB also known as

BABY MB-A CHILD- BY JMB THE APPLICANT

BETWEEN

JMB.....APPLICANT

AND

CT.....RESPONDENT

JUDGEMENT

1. The applicant herein moved this honourable court vide an Originating Summons dated 6th February,2020 seeking for orders that;

- a) Pursuant to Article 14(4) of the Constitution of Kenya 2010 and section 11 of The Children Act, 2001, this honourable court be pleased to declare the child BABY RB also known as BABY MB a Kenyan citizen by birth.
- b) Pursuant to the provisions of SECTION 159 OF THE CHILDREN'S ACT, 2001, this honourable court be pleased to dispense with the requirements of the consent to the adoption as required by the provisions of SECTION 158 OF THE CHILDREN'S ACT, 2001.
- c) The applicant JM be authorized to adopt BABY RB also known as BABY MB a child.
- d) Upon the making of the adoption order, the child to be known as NMB.
- e) Upon making the adoption order, VBK be appointed legal guardian of the child as provided for by the provisions of SECTION 164 OF THE CHILDREN ACT, 2001.
- f) Upon making of the adoption order, the Registrar General do make an entry recording the adoption and the estimated date of birth of the child as 7th april,2018 in the Adopted Children Register as provided for by SECTION 170 OF THE CHILDREN ACT, 2001.
- g) The costs of this application be costs in the cause.

2. The application is supported by the averments contained in the statement in support thereof sworn on 6th February, 2020. The applicant is an adult Kenyan citizen born in 1985. She has never been married and doesn't have children of her own. The motivation to adopt the baby has been ignited by the desire to have children in her life regardless of where the child comes from, and more so, to show love to the child and give the child a family. Regarding her occupation, the applicant is an accountant working at [Particulars Withheld] Community Shop.

3. Concerning the child estimated to be born on 7th April, 2018, she was found abandoned at [Particulars Withheld] village Maua by the area

chief namely Mr. Elvas Mugambi together with his two assistants namely Silas Kinyua and Julius M'amuni while on normal patrol on the evening of 25th April, 2018. Together with the help of a good Samaritan they rescued the baby who was well wrapped and made a report at Maua police station. The baby was later referred to **Nyambene General Hospital**. She was committed into the legal custody of **Neema House Infant Rescue** centre through **Children's Court Maua, Children's Case No.72 Of 2018**.

4. Every effort made by the police to trace the parents and or relatives of the minor did not bear any fruit. This is evidenced by Maua police station's final letter dated 20th November 2018.

5. Consequently, in its case committee meeting held on 23rd November, 2018, **Change Trust case committee** declared the child free for adoption and a **Certificate S/No. [...]** thereof issued. Subsequently, on 12th August 2018, the child was placed under the care and control of the applicant for a mandatory three month's continuous period in compliance with Section 157 of the Children Act.

6. Upon instituting these proceedings, **MNA** was on 24th September, 2020 appointed guardian ad litem pursuant to the Chamber Summons Application dated 6th February, 2020. The Director of Children Services and guardian ad litem were directed to file their respective social inquiry reports within 14 days.

7. Preceding the hearing, the Director Children services through the county children coordinator Mombasa County filed his report dated 12th February, 2021 recommending the adoption. Equally, the guardian ad litem filed her report on 12th October, 2020 also recommending the adoption.

8. During the hearing, the applicant urged the court to allow the application to enable her adopt the baby. She confirmed that they understood the consequences of adoption and that it's permanent.

9. I have considered the application herein, materials in support and evidence by various witnesses. It is incumbent upon the court to ascertain from the available evidence and material in support whether; the baby is available for adoption; the applicant is fit to adopt the baby and most importantly, whether the adoption is in the best interests of the child.

10. The baby herein was found abandoned at [Particulars Withheld] Village Maua by the area chief namely Mr. Elvas Mugambi together with his two assistants namely Silas Kinyua and Julius M'amuni while on normal patrol on the evening of 25th April, 2018. As evidenced by the final letter from Maua police station dated 20th November 2018, nobody has laid claim over the baby. In conformity with Section 158 and 159 of the Children Act, consent of the biological parents or guardian is dispensed with.

11. Regarding the baby's nationality, it is clear the baby was found abandoned at [Particulars Withheld] village Maua within the republic of Kenya. The Constitution under Article 14(4) recognizes that a child found within the republic of Kenya who is less than 8 years of age, and whose nationality and parents are not known, is presumed to be a Kenyan citizen by birth. In view of this provision, the child herein is presumed to be Kenyan citizen by birth.

12. In terms of age, the child is above 6 weeks and below 18 years which period falls within the age bracket of any adoptive baby pursuant to section 156 of the children's act. Further, Section 157 does recognize any child who is resident in Kenya whether born in Kenya or not to be eligible for adoption. I have no doubt the child is fit for adoption.

13. Concerning the applicant's suitability, she is a Kenyan citizen thus qualifying the adoption to be a local one. The applicant is 36 years old which places her under the age bracket of not less than 25 years or more than 65 years for an adoptive parent in compliance with section 158 of the children's act.

14. The applicant herein has been described as financially stable working with as accountant with an estimated monthly income of Kshs 70,000 hence enough resources necessary for the family support. She is caring, loving and Christian with no criminal record. Since the placement of the minor into her custody, the child has fully bonded. She also understands the consequences of adoption and that it is permanent. She appreciates the role of a parent and admits that she will treat the baby like her biological child. I have no doubt that she has met the necessary requirements to adopt the baby and that she will provide and promote a stable, supportive and nurturing environment for the baby.

15. On the question whether the adoption is in the best interests of the baby, guidance can be drawn from Article 53(2) of the Constitution and Section 4(2) and (3) of the Children Act which underscores the best interests of a child principal as the primary consideration before making any decision concerning a baby. In the case of **IN Re B (BABY)[2018]eKLR** the court observed that;

“The purpose of Kenya's Constitution and Children Act is to protect and promote the welfare of Children by providing them with stable family units. The fundamental concern therefore in every adoption cause is provision of the best interests of that very child...

It is that family unit that the Constitution contemplates under Article 45 which also has to take responsibilities in fulfilling the obligations enjoined in Article 53 of the same constitution.”

16. The child herein was abandoned and nobody has come forward to claim her. She is like any other child in need of parental care and guidance. She needs basic necessities like food, shelter, education and clothing. She has fully integrated with the applicant. It is my finding that it is in the best interests of the child that this adoption application be allowed.

17. Accordingly, the application is allowed with orders that:

- a) The child be and is hereby declared a Kenyan citizen by birth
- b) The consent of the biological parents or guardians is dispensed with.
- c) The applicant is authorized to adopt BABY RB also known as BABY M B who shall henceforth be known as NMB.
- d) VBK is hereby appointed legal guardian of the minor in the event of any eventuality befalling the applicant.
- e) The Registrar General is directed to enter the adoption order and estimated birth date of the child as 7th, April, 2018 in the adopted children's register.
- f) The guardian ad litem is discharged.

Dated, signed and delivered at Mombasa this 18th day of June, 2021

J.N. ONYIEGO

JUDGE