



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**ADOPTION CAUSE NO. E003 OF 2021 (OS)**

**AND**

**IN THE MATTER OF THE CHILDREN'S ACT (NO. 8 OF 2001)**

**AND**

**IN THE MATTER OF BABY M**

**AND**

**AN APPLICATION FOR ORDERS OF ADOPTION OF BABY M**

**BY**

**CWM**

**JUDGEMENT**

1. By the Originating Summons dated 21.9.2020, the Applicant CWM seeks to adopt a male child known as Baby M. The Applicant is single mother with one biological child named SJM.
2. Baby M was born on 22.9.18 at St. Mary's Health Service, Githurai 44 in Nairobi to one AW of mobile number telephone xxxx. The baby was abandoned by his mother in the night and the matter was reported at the Kasarani Police Station by Fraciah Wangui, a medical practitioner at the facility, vide Occurrence Book Number xx/xx/xx/xxxx. The child was on 24.9.18, taken to The Nest Children's Home for temporary care and protection pending committal. On 31.10.18, the Children's Court at Nairobi *vide* Protection and Care Case Number 600 of 2018 formally committed the child to The Nest Children's Home, for a period of 3 years. In a final letter dated 10.5.19, the Kasarani Police Station confirmed that since the child was reported abandoned on 22.9.18, no one had come forward to claim him.
3. The Applicant has been assessed by the Little Angels Network, and was found to have met all the requisite legal and social requirements. The case committee sitting on 8.5.19 did approve the Applicant as suitable and fit to adopt a child. and the child was placed with the Applicant on 2.8.19.
4. SNO was on 21.4.21 appointed guardian ad litem for the child pending the hearing and determination of the adoption application, in accordance with Rule 8 of the Adoption Rules.
5. The Applicant has gone through the requisite assessments, and reports in respect thereof have been duly filed. In compliance with Section 156 of the Children Act, Little Angels Network by its certificate serial number xxxxx declared the child free for adoption on 8.2.19. the certificate and report the agency's report dated 8.5.19 were duly filed. For the Director of Children Services, a report dated 29.4.21 by Ezekiel Kimani, Assistant Director, Nairobi Children's and countersigned by Hoyd Isadia, Deputy Director, Children Services. For her part, SNO the guardian ad litem, filed her report dated 19.5.21. All these reports are favourable and recommend the adoption of the child by the Applicant in the best interests of the child.
6. It is noted that the child has been in continuous care and control of the Applicant for a period of over 2 years which is more than the statutory 3 months required under Section 157 of the Act. The Applicant is not younger than 25 years nor older than 65 years. She is more than 21 years older than the child. Section 158 of the Act has thus been complied with.

7. The Applicant however is a single female who seeks to adopt a male child. The Children's Act at Section 158(2) provides that an adoption order shall not be made in favour of a sole female applicant in respect of a male child unless the Court is satisfied that there are special circumstances to justify the making of the order. The National Adoption Committee formulated guidelines which the Court may take into consideration while considering whether special circumstances exist to justify an order allowing a sole female applicant to adopt a male child. The special circumstances include *inter alia* that the proposed applicant is the only person available to adopt the child. In the present case, it is evident that special circumstances do exist. The record shows that the child was born on 22.9.18 was abandoned by his mother at St. Mary's Health Centre shortly after birth. He was taken to the Nest Children's Home on 24.9.18 where he remained until 2.8.19 when he was placed with the Applicant. From March 2018 when he abandoned to August 2019, the child had been at the Nest Children's Home without anyone coming forward to claim or adopt him. Courts have taken judicial notice of the fact that it is often unmarried female applicants who seek to adopt children. Male children who are not adopted by married couples end up remaining in children's homes with no hope of ever being adopted. The fact that the child was not adopted for the period he remained at Nest Children's Home after being rescued confirms this. I am therefore satisfied that special circumstances do indeed exist to justify the making of an adoption order in this case.

8. The Applicant has been made aware of the consequences of an adoption order as well as the rights of an adopted child. She shall assume all parental rights and duties of the biological parents in respect of the child. I am satisfied that she fully understands that the adoption order is final and binding during the lifetime of the child and that the child shall have equal right to inherit her property together with her biological child. The Applicant cannot under any circumstances give up the child. The Applicant has demonstrated that she has the psychological and emotional capacity as well as the material resources to raise the child in a loving home environment. From my observation in Court the child appears to have bonded well with the Applicant. She proposes to name the child BJM.

9. The Applicant has nominated her brother and sister, EDGM and MKM respectively to be the legal guardians of the child, in the event of the Applicant dying or becoming incapacitated before the child is of full age. The proposed legal guardians were however not availed to the Court for examination as to their readiness, willingness and ability to be legal guardians of the child. No reason was given to the Court for their failure to appear before Court. Accordingly, the Court is unable to appoint them as legal guardians for the child. In this regard, the Court does note that under Section 164 of the Act, appointment of a guardian in the case of a local adoption, is not mandatory.

10. Having taken into account the foregoing factors, this Court has formed the opinion that it would be in the best interests of the child that he be adopted by the Applicant. The Court is further satisfied that all the legal requirements for a local adoption have been met and makes the following orders as prayed in the Originating Summons herein:

- a. The Applicant CWM, holder of national identity card number xxxx is hereby allowed to adopt Baby M, who shall henceforth be known as BJM.
- b. The child is hereby declared to be a Kenyan citizen by birth.
- c. I direct the Registrar General to enter this order in the Adoption Register.
- d. SNO, the guardian *ad litem* is hereby discharged.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 1<sup>ST</sup> DAY OF OCTOBER, 2021**

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**M. THANDE**

**JUDGE**

**In the presence of: -**

..... **for the Applicant**

.....

**Court**

**Assistant**