



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
FAMILY DIVISION
ADOPTION CAUSE NO. 21 OF 2015
IN THE MATTER OFTHE CHILDREN ACT
AND
IN THE MATTER OF ATHE ADOPTION OF...BABY M
BY
TMM
SOLE FEMALE APPLICANT
JUDGMENT

1. Before this court is the Originating Summons dated 27th January 2015 by which the Applicant TMM seeks the following orders: -

“1. THAT the Applicant be authorized to adopt BABY M a child.

2. THAT the consent of the biological mother be dispensed with.

3. THAT the child be declared a Kenyan Citizen.

4. THAT upon making the adopting orders the child be known as MWM, and the Registrar General do make the appropriate entry in the Adopted Childrens Register.”

2. The summons was supported by the statement of the Applicant and was canvassed by way of *viva voce* evidence.

3. The Applicant told the Court that she is a single lady. She stated that she has previously lost **two (2)** children in infancy, hence the desire to now adopt a child. The Applicant confirmed that she understands the legal implication of an adoption order. That she will accord to the Subject child all the rights and obligations due to a biological child. She stated that her family are aware of and fully support her intention to adopt the child.

4. **PW 3 FRANCIS NDELEKO** an officer from the **Child Welfare Society of Kenya (‘CWSK’)**. He confirms that the society had filed its report dated **25th February 2016**, recommending the adoption.

5. **PW 4 LK** was the **Guardian Ad Litem**. She also filed her report dated **10th February 2021** recommending the adoption.

ADOPTION AND DETERMINATION

6. The prerequisite which must be met before an adoption order can be made are set out in **section 156(1)** of the **Children’s Act 2001** which provides as follows: -

“159(1) No arrangement shall be commenced for the adoption of a child unless the child is at least six (6) weeks old and has

been declared free for adoption by a Registered Adoption Society in accordance with this Rules prescribed in that behalf”.

7. The Subject child is believed to have been born on or about **2nd July 2011**, Therefore she is now **ten (10) years** old and is above the **six (6) week** age limit provided for in the law.

8. The **Child Welfare Society of Kenya** which is a registered adoption Agency has annexed to their report a certificate Serial No. **0781** dated **25th February 2016** declaring the child Free for Adoption. In the circumstances, I am satisfied that the legal prerequisites for an adoption order have been met.

9. The duty of this court is to analyze the evidence and the material presented before it to determine whether the Applicant is a suitable adoptive parent.

10. The Applicant is a Kenyan citizen as evidenced by the copy of her National Identity Card annexed to the summons. The Applicant told the court that she has never been married. However, the Applicant stated that she conceived twice before but unfortunately, both children died in their infancy in the year **1989** and **2005** respectively. Thereafter the Applicant underwent a medical procedure, which made it impossible to conceive another child.

11. The Applicant stated that she is motivated to adopt the child due to her desire to experience motherhood as well as her desire to have an heir. She stated that her family are in support of her decision to adopt and have welcomed the child as one of their own.

12. The Applicant lives in her own home in **Gatanga Sub-county Murang'a County** where she has put up additional rooms for rental. The Applicant is a business woman who runs a green grocery shop. She also has dairy cows which provide additional income. The Applicant earns approximately **Kshs.30,000/-** monthly which is sufficient to provide for the needs of the child. She is in good mental and physical health.

13. The Applicant is a Christian and intends to raise the child in the Christian Faith. She is an active member of the [**Particulars Withheld**] **Church Kiahuria, Kiambu County** where she is the Treasurer.

14. The Applicant has annexed a copy of her Police Clearance Certificate confirming that she does not have a criminal record. She has appointed her sister **MS JW** as the legal Guardian for the child. The Applicant lives in close proximity to her siblings who are available to assist in raising the child.

15. Based on the material presented to this court ,I find that the Applicant is a suitable adoptive parent.

16. The Subject child was born on **2nd July 2011**. On the same day, a few hours after her birth the child was found abandoned at the **Kyumbi shopping centre** in **Machakos County**. Good Samaritans rescued the child who was rushed to **Machakos Level – 5 Hospital** for medical attention. The matter was reported at **Kyumbi Police Station** vide **OB Number xx** of **xx July 2011**.

17. The Children's office was notified of the incident and the child was presented at the **Children's Court** in **Machakos** who committed her to the **CWSK** for care and protection. Thereafter on **2nd March 2012** the child was placed in the custody of the Applicant under a Foster Care Agreement, where she has lived to date.

18. **Article 14 (4)** of the **Constitution of Kenya 2010** provides that:-

“(4) A child found in Kenya who is, or appears to be less than eight years of age and whose nationality and parents are not known, is resumed to be a citizen by birth.”

19. In view of the fact that the Subject child was found abandoned at birth in the **Republic of Kenya** I hereby declare her to be a citizen of Kenya by birth.

20. Efforts made to trace the biological mother or other relatives of the child have borne no fruit. The **CWSK** even went as far as placing pictures of the child in the Daily Newspapers but no person came forward to claim the child. The final police letter dated **18th December 2014** from **Kyumbi Police Station** indicates that police have been unable to trace the biological mother of the child.

21. Given that the Subject child was abandoned at birth there exists no known person from whom consent for this adoption can be sought and/or obtained. In the circumstances, I do waive the requirement for consent in line with **section 159 (1) (a)** of the **Childrens Act**.

22. In deciding upon any matter involving a child Courts are obliged to give priority to the best interests of the said child. **Section 4(2)** of the **Children Act 2001** provides: -

“(2) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”.(own emphasis)

23. This is a child who was abandoned at birth. She faced an uncertain future living in orphanages or other similar institutions. The adoption allows the child the opportunity to be raised in a loving and stable home environment, which is certainly in her best interest.

24. A home visit was conducted on **20th June 2018**. The Applicant was found to be living in her own home in **Gitanga Sub-County** in **Githanga Location** near **Kaguku Junction**. The home is in a rural environment conducive for raising a young child. The Applicant has enrolled the child in a nearby school. As stated earlier the applicant lives near her siblings so the child has the company of her cousins to play with.

25. I was able to interview the Subject child. She was a healthy cheerful child and was neatly dressed. The child confirmed that she is in **Grade 2** and she identified the Applicant her mother.

26. I notice that the child has been living with the Applicant since **March 2012**. The Applicant is the only parent the child knows and it was clear that there exists a parent – child bond between the two. I have perused the reports of the Adoption Agency, the Guardian Ad Litem as well as the Report dated **22nd June 2018** prepared by the **Director Childrens Services**. All the reports were positive and all recommend the adoption.

27. In conclusion I find that this adoption will serve the best interest of the child. Accordingly, I allow this summons and make the following orders: -

- (1) The Applicant **TMM** is authorized to adopt the child known as **Abandoned Baby** alias **Baby CMM**.
- (2) Upon adoption the child shall be known as **MWM**.
- (3) The child is declared to be a Kenyan Citizen by birth and is entitled to all the rights and liberties due to a citizen of Kenya.
- (4) The Registrar General is directed to make the relevant entry in the Adopted Children's Register.
- (5) **Ms JW** is appointed as the legal Guardian for the child.

DATED IN NAIROBI THIS 5TH DAY OF NOVEMBER, 2021

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MAUREEN A. ODERO

JUDGE