



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

ADOPTION CAUSE NO. 4 OF 2019 (OS)

AND

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

AND

IN THE MATTER OF BMS (MINOR)

AND

AN APPLICATION FOR ORDERS OF ADOPTION OF BMS (MINOR)

BY

DKK

JUDGEMENT

1. The Applicant DKK is a single never married woman born in 1974 in Nairobi. The Applicant is an international civil servant working with [particulars withheld]. She resides in Johannesburg South Africa. The Applicant is the last born of 6 siblings. Her parents are deceased. Her second born brother SSK (S) died of HIV complications on 4.5.15. He left a wife and 4 sons, OS, aged 24, BS, aged 16, TS, aged 12 and AS, aged 6. The Applicant, who has no children of her own, seeks to adopt the 3 minor sons of her late brother S. She has moved this Court by her Originating Summons dated 6.1.19 seeking to adopt BS.

2. The child BS was born on 3.1.04 to S and his wife NAO (N). N is unemployed and unable to take care of the child. The Applicant has supported the child since before the demise of his father and continues to do so.

3. On 28.3.19, this Court did appoint MAO as the guardian ad litem for the child pending the hearing and determination of the adoption application, in accordance with Rule 8 of the Adoption Rules. To facilitate this adoption, the Applicant has been assessed by the KKPI Adoption Society, a registered adoption society, the Director of Children Services, and MAO, the guardian *ad litem* and all have filed their respective reports. In compliance with Section 156 of the Children Act, KKPI Adoption Society, which arranged the adoption, declared the child free for adoption on 13.6.18 *vide* its certificate No. 599. The society's report was filed in Court on 9.10.19. The report of the Guardian *ad litem* was filed on 7.6.19. SMM, the Magarini Sub-County Children's Officer for the Director of Children Services filed his report dated 21.6.19 on 24.6.19. All these reports are favourable and recommend the proposed adoption as it shall be in the best interest of the child. More importantly, N, the biological mother of the child has given her written consent for the adoption, dated 16.9.19 and a certificate of acknowledgement dated 9.10.19.

4. It is to be noted that the Applicant, a single female seeks to adopt a male child. The Children 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 adoption of a male child by a sole female applicant. The special circumstances include *inter alia*, that the child is a relative of the applicant and has a sibling who is also adopted by the applicant. The child herein is the son of the Applicant's deceased brother. Further, in addition to the child herein, the Applicant also seeks to adopt his 2 brothers. As such, the Court is satisfied that special circumstances do exist herein.

5. The Applicant has demonstrated that she has the psychological and emotional capacity as well as the material resources to raise the child and his 2 brothers. The Applicant is not younger than 25 years of age nor older than 65 years of age and is more than 21 years older than the

child. Section 158 of the Act has thus been complied with. The Court further notes that this is a kinship adoption as the Applicant is a biological aunt of the child.

6. The Applicant and N been made aware of the consequences of an adoption order, namely that the same is final; that the Applicant shall assume all of N parental rights and duties in respect of the child; that the Applicant shall treat the adopted child as if he was born to her; that the adoption order is binding during the lifetime of the child and that the child shall have the right to inherit her property; that she cannot give up the child owing to any subsequent unforeseen behaviour or other changes in the child.

7. The Applicant has nominated her cousin MC S-M and his wife ALA 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 Court examined the proposed legal guardians and is satisfied as to their readiness, willingness and ability to be legal guardians of the child.

8. Having taken into account the foregoing factors, this Court has formed the opinion that it would be in the best interest of the child to be adopted by the Applicant. The Court is further satisfied that all the legal requirements for a kinship adoption have been met and makes the following Orders:

- a. The Applicant, DKK, holder of national identity card number [...], is hereby allowed to adopt BS.
- b. MC S-M holder of national identity card number [...] and his wife ALA holder of national identity card number [...] are hereby appointed legal guardians of the child in the event that the Applicant dies or is otherwise incapacitated before the child attains the age of eighteen years.
- c. I direct the Registrar General to enter this order in the Adoption Register.
- d. MAO the guardian *ad litem* is hereby discharged.

DATED, SIGNED and DELIVERED at MOMBASA this 7th day of February, 2020

M. THANDE

JUDGE

In the presence of: -

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

..... **Court Assistant**