

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KIAMBU

ADOPTION CAUSE NO 25 OF 2018

IN THE MATTER OF THE CHILDREN ACT

AND

IN THE MATTER OF AN APPLICATION FOR AN ADOPTION ORDER

IN RESPECT OF BABY M aka Baby AM

JUDGMENT

1. The Applicant herein, **SWG** is single a Kenyan citizen and a mother of two adults and one minor, all her biological children. The Applicant works with the Kenya National Police Service but also carries on side businesses. She is currently aged 53 years. She resides in her own home at **Ruiru**. The Applicant subscribes to the Christian faith. She has applied to adopt **Baby M** aka **Baby AM**, a male minor born on 31st August 2016 at [**Particulars Withheld**] **Hospital, Nairobi**. The minor's mother abandoned him immediately after birth. A report was made to **Soweto Police Station** vide **OB No [..]** of 27th **September 2016** after efforts by the hospital to contact the mother failed. Thereafter, the child was admitted to Happy Life Children Home, and committed to the Home by order of the Children Court, Nairobi in **Care and Protection Case No. 338 of 2016**.

2. Subsequent attempts to reach the mother and father on contacts left at the hospital did not yield results and nobody has ever come forward to claim him. The child was therefore declared free for adoption by **Buckner Kenya Adoption Services** vide certificate **No. [...]** dated 14th July 2017. Thus, the consent of the mother/father of the subject is dispensed with. On 24th July 2017, the child was placed in the care of the Applicant and has been in her custody since.

3. Prior to the hearing of the Originating Summons, the adoption society, the guardian *ad litem* and the Kiambu County Children Co-Ordinator filed their respective reports. All the reports are favorable and recommend the proposed adoption. It appears from these reports and other material on record that the Applicant is in good physical and emotional health, is financially stable and capable of caring for and providing for the subject minor. It seems that the primary motivation for the adoption is altruistic: her love for children, the desire by the Applicant to expand her own family, in addition to giving care to a child in need. The child has bonded well in the adoptive family and has been embraced by his proposed adoptive siblings.

4. Under Section 158(2) (b) of the Children Act an adoption order shall not issue in favor of a sole female applicant concerning a male minor, save under special circumscribed circumstances including, where the subject child is a relative to the Applicant, has special needs or where the Applicant has had other biological or adoptive children over whom she exercises willing parental responsibility. Other special circumstances are:

- a) where the child to be adopted has a sibling who is also being adopted by the Applicant;
- b) where the Applicant is the only person available to adopt the child; and
- c) where the Applicant is the legal guardian of the child or children appointed by will or in adoption proceedings and the parents die or become permanently incapacitated.

See **Guidelines of the National Adoption Committee** issued on 13th January 2010 pursuant to section 155 of the Children Act.

5. The court is obligated, in considering an adoption application, to uphold the best interest of the child. See Article 53 (2) of the Constitution and Section 4(3) of the Children Act. In this case, the Applicant has her own 3 children whom she has raised. Although two are adults the third is a minor and is under the willing parental responsibility of the Applicant. The adult children are independent and have given consent to the proposed adoption. In my considered view, the Applicant has satisfied the requirements for a local adoption under the Children Act, as evidenced by her capacity and willingness to care for her own children and the minor herein. She has a good social support network in her extended family which supports the adoption.

6. In the circumstances, the court considers it to be in the best interest of the child herein to allow the adoption sought. The court therefore grants prayers 1 to 6 of the Originating Summons filed on 17th October 2018.

SIGNED AND DELIVERED ELECTRONICALLY THIS 12TH DAY OF MAY 2020

C. MEOLI

JUDGE