

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

ADOPTION CAUSE NO 29 OF 2018

IN THE MATTER OF ADOPTION OF BABY BN

FWW.....APPLICANT

JUDGMENT

1. The minor **BN** is the male child the subject of this cause. His presumed year of birth is 2013. The minor was found by a good Samaritan, one Gisiora on 2/10/16 while abandoned at JF Church Kayole. A report was made to Kayole Police Station on the next day *vide* O.B No. 21/3/10/2016. He was admitted to Imani Children Home Eastleigh on 11/10/16. Subsequently, he was committed to the home by an order made at the Children's Court Nairobi in Protection and Care Case No. 441 of 2017. He remained at the home as efforts were made to trace his parents. These efforts bore no fruit as nobody came forward to claim him.

2. On 15th October 2017 Buckner Kenya Adoption Services, declared him free for adoption *vide* certificate No. 0238. Following a care agreement executed between the Applicant herein, **FWW** and Imani Children's Home on 19.11.2017, **BM** was placed in the care of the Applicant and has remained thus to date. The Applicant has now applied to adopt BM.

3. The Applicant is a single female aged 45 years old. She was once married but due to biological complications was unable to have children of her own, and the marriage fell apart. She works at [particulars withheld] Women Welfare Program and earns about KShs.30,000/= per month and she also owns some land parcels. She is in good health and enjoys a harmonious relationship with her parents and siblings who are in full support of the proposed adoption. The Applicant resides in a rental premise at K, Limuru with the subject minor and a care giver.

4. On 28/5/2019, the court appointed GVC as guardian ad litem and ordered that she and the children office concerned prepare reports. These are now on record and the court has reviewed them. All of them are positive and recommend the adoption. It is apparent from the reports that the Applicant is mature, emotionally, and financially stable. She has exercised parental responsibility over the subject much since 2017 and the child is thriving. The two have apparently bonded well. The Applicant has a strong support network in her family. The application to adopt **BN** is driven by her desire to have her own child to care for and love.

5. From the reports by the Children Officer and the guardian ad litem, the Applicant's residence offers a conducive environment for a growing child. The subject minor has already been enrolled in a local school and is performing well. All in all, the prospective mother and child appear to have bonded well. In an application of this nature the court must uphold the best interests of the child. See Article 53 of the Constitution and Section 4(3) of the Children Act. The Applicant in my opinion has proven capable of providing for and caring for the subject minor and is well suited as an adoptive mother. On the other hand, the subject child has found a loving home where he can be nurtured to fulfil his potential.

6. The Applicant herein is a single female while the subject minor is a male child. Under the provisions of Section 158(2)(b) an adoption order in such a case may be made where special circumstances exist. The subject minor was already 3 years old at the time of abandonment. He was 4 years old at the time he was placed in the Applicant's care. There is no evidence that any other person has expressed the desire to adopt the subject minor. He is now 7 years old having lived under the Applicant's care for 3 years. The Applicant appears to have taken the child as her very own and wishes to name him after her father. Her father by his letter dated 30.7.2017 is much invested in this process whereas the Applicant's brother **NNW** has accepted to be the co-guardian alongside his wife **ENW** it would be averse to the child's interest if he was to be removed from a loving family which desires to care for him and instead condemned to live under institutional care.

7. In my opinion, this case meets the requirement No.5 of the Guidelines for Special Circumstances by the Adoption Committee of January 2010. In the circumstances the court is assured that the Applicant meets all the requirements for a local adoption. Reviewing all the material before me, I am persuaded that the proposed adoption meets the best interests of the subject. In the circumstances, the court allows the Originating Summons filed on 18th December 2018 in terms of prayers 1 to 6.

SIGNED AND DELIVERED ELECTRONICALLY THIS 2ND DAY OF OCTOBER 2020.

C. MEOLI

JUDGE