



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 38 OF 2020 (O.S)

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

IN THE MATTER OF AN APPLICATION FOR ADOPTION OF MAMAB (MINOR)

BY

AA - A (APPLICANT)

JUDGMENT

1. The Applicant AAA is a Kenyan citizen. The Applicant was previously married to one PA with whom she has since separated. The Applicant has three biological children, all of whom have attained the age of majority. She wishes to adopt the child known as MAMAB, a minor of the male sex through the Originating Summons dated 17th June, 2020. The Applicant is a Judge of the High Court of Kenya. She is a practicing Muslim as is the child whom she intends to raise in the Muslim faith.
2. The record indicates that the minor is a nephew to the Applicant having been borne by the Applicant's brother AMAB and his wife MMA who died on 14th July, 2011 and 13th April, 2019 respectively. There is on record a copy of a Certificate of Death of serial number [...] and Burial permit of serial number [...] respectively. The child was aged 13 years at the time of his mother's demise. The minor has been under the care and protection of the Applicant since his biological mother's demise.
3. Prior to the hearing of the adoption application, the Kenya Children's Homes Adoption Society prepared and filed a report dated 3rd July, 2020. They had also issued a Certificate of Serial No. [...] dated 13th May, 2020 declaring the child free for adoption. The guardian ad litem JAN prepared and filed a report dated 29th July, 2020 which was favourable and recommended the adoption of the child by the Applicant.
4. An officer from the office of the Director of Children's Services conducted home visits and established that the Applicant is financially and emotionally capable of providing for the up keep and education of the child. She filed a report dated 22nd July, 2020. The report recommended the adoption for reasons that it was in the best interest of the child since the Applicant has been in the child's life since birth and has been his sole custodian and guardian since his biological mother's death. It further established that the Applicant is financially and emotionally capable of providing for the child.
5. The Children's officer noted that the Applicant has met all the legal requirements for a local adoption. She recommended the adoption for reasons that it is in the best interest of the child who is an orphan following the death of his biological parents.
6. The child is aged 14 years and is currently a standard seven (7) pupil at [Particulars Withheld] Academy. He has consented to the adoption. A consent letter dated 20th September, 2020 in which the Child indicates that he understands the process and has no objection to the adoption is on record. The child's older siblings and the Applicant's biological children have also consented to the adoption and support it. Their respective consent letters are on record. Her family members are aware of the proposed adoption and support it.
7. The Applicant, being a single female Applicant wishes to adopt a male child. Under **Section 158(2)** of the **Children Act No. 8 of 2001**, an adoption order shall not be issued in favour of a sole female Applicant in respect of a male child unless the court is satisfied that there are special circumstances that justify the making of such adoption order.
8. The Adoption Committee established under **section 155(1)** of the **Children Act** issued guidelines on 13th January, 2010 in regard to circumstances that the court will take into account in determining whether the set of facts put forward by the Applicant fulfills the criteria of special circumstances.
9. In the case of a sole female applicant adopting a male child, the following are circumstances which may be considered as special:

i. When the child is a relative.

- ii. *When the child has special needs and the applicant is willing and has capacity to take care of the child.*
- iii. *Where the applicant has adopted or has another biological child or children over whom she is willingly exercising parental responsibility.*
- iv. *Where the child to be adopted has a sibling who is also being adopted by the applicant.*
- v. *Proposed applicant is the only person available to adopt the child.*
- vi. *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.*

In the instant case, the child is a relative to the Applicant. Additionally, the Applicant has three (3) biological children over whom she is willingly exercising parental responsibility and is in the process of adopting the child's sibling MAMAB.

10. The Applicant has appointed her sister AMA and brother FMA to be the legal guardians of the child. Both parties have consented to be appointed as such through Letters of Consent dated 25th November, 2019 and 28th September, 2020 respectively. The consent of the child's biological parents was dispensed with since the child is an orphan.

11. It is important to note that the orders sought by the Applicant herein relate to a child. In law, in any matter concerning a child the best interests of a child are what is of paramount importance as provided for under **Article 53(2)** of the **Constitution** and **section 4(3)** of the **Children Act No. 8 of 2001**.

12. This is not only a local adoption but also a kinship adoption and from the record the Applicant has fulfilled all the legal requirements relating to the adoption of the child. After a careful assessment of the reports filed herein, I am convinced that the Applicant meets the social parameters that are considered relevant to her taking on parental responsibility and custody of the child in this matter on a permanent basis as would be conferred by the adoption order sought. Not only does the child gain a warm and loving family, he also gains additional siblings.

13. Reasons wherefore I allow the prayers sought in the Originating Summons dated 17th June, 2020 and order as follows:

- i. The Applicant, AA - A is hereby allowed to adopt **MAMAB**. Upon adoption he shall continue to be known as **MAMAB**.
- ii. His date of birth is 28th January, 2006. He was born in Kenya, and the place of birth is Aga Khan Hospital Nairobi.
- iii. AMA and FMA, are hereby appointed legal guardians of the child in the event that the Applicant dies, or is incapacitated by ill-health.
- iv. The Registrar General is directed to enter this Order in the Adoption Register.
- v. The Director of Immigration is hereby authorised to issue the child with a Kenyan passport.
- vi. The guardian ad litem is hereby discharged.

It is so ordered.

DATED SIGNED AND DELIVERED IN OPEN COURT THIS 1ST DAY OF OCTOBER, 2020.

.....

L. A. ACHODE

HIGH COURT JUDGE