



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

ADOPTION CAUSE NO. 90 OF 2016

IN THE MATTER OF THE CHILDREN ACT 2001

AND

IN THE MATTER OF AN APPLICATION FOR ADOPTION

AND

IN THE MATTER OF BABY MC alias MNC

MNM.....APPLICANT

JUDGMENT

1. The applicant MNM is a single mother of an adult daughter. She works as a telephone operator at [Particulars Withheld] Company. She filed this application on 4th June 2016 seeking to adopt child MC alias MNC. The matter was heard by Justice Farah S.M. Amin who on 10th October 2017 delivered a ruling that raised various concerns. The matter then came before me on 25th April 2019 when the applicant's counsel M/s Muhanda informed the court that the concerns that had been raised have been dealt with in the further reports that have been filed.
2. The child is estimated to have been born on 14th October 2014. He was abandoned at Kimbimbi Sub-County Hospital by his grandmother on 14th December 2014. The grandmother had brought the child for treatment because he had gastroenteritis. The incident was picked by a social worker who on 20th January 2015 reported to Wang'uru Police Station. The child was referred to New Life Home Trust at Nyeri. On 3rd February 2015 he was formally committed to the Home by the Senior Resident Magistrate at Wang'uru in **Care and Protection Case No. 1 of 2015A**. On 4th February 2015 the child was transferred to New Life Home Trust at Kilimani in Nairobi. On 29th August 2015 the child was declared free for adoption by Change Trust Adoption Society. There is evidence from the Police and the adoption agency that the child has not been claimed by its relatives, and that efforts to trace them has not been successful.
3. On 13th October 2015 the child was placed under the control and care of the applicant where he has remained to date. It is evident that the applicant and the child have bonded well. The child has been given parental love, care and good nurturing by the applicant. The applicant's daughter has also bonded well with the child.
4. The court appointed MGM as guardian *ad litem* and directed that she investigates the suitability of the applicant to adopt the child and to file a social report. A similar request was made to the Director of Children Services. Both found that the applicant was suitable and qualified to adopt the child. Regarding **section 158(2)(b)** of the **Children Act**, it is noted that although the applicant is a sole female applicant she has a biological daughter whom she has brought up to adulthood.
5. The issue of the date of birth of the child was raised by the judge. The child was taken to the Hospital and abandoned there. It does appear she did not give the child's date of birth. The date of birth was therefore estimated by the Health Workers to be 6th February 2013.
6. It is clear from the filed documents that New Life Home Trust has a campus at Nyeri and at Nairobi. The child was committed to Nyeri campus by the Court. Nyeri transferred it to Nairobi because it required medical attention which was only available in Nairobi.
7. When the child was committed to New Life Home Trust, there was expectation that the maximum it could be there was three years and that, in the meantime, the Director of Children Services would actively seek alternative care for the child, including returning it to its family.

What happened was that the applicant came up. The family had not turned up. Under **sections 156** and **157** of the **Act**, the Home signed a Care Agreement with the applicant who was a prospective adopter.

8. The court finds that it is in the best interests of the child to be adopted by the applicant. The applicant has demonstrated her ability to provide a conducive home and family environment in which the child will grow and develop. She will assume all parental rights and obligations of the biological parents of the child once adopted, and shall treat him as if he was born to her. She has been made aware that once the adoption order is made, it shall be final and binding during the lifetime of the child. The child shall have the right to inherit her property. The applicant shall not be able to give up the child owing to any subsequent unforeseen behavior or other changes on the child. This court dispenses with the consent of the child's biological parents as the child was abandoned.

9. Having been satisfied that all the legal requirements for a local adoption under the **Children Act** have been met, the following orders shall issue:-

(a) the applicant MNM is hereby allowed to adopt child MC alias MNC;

(b) the child MC alias MNC shall henceforth be known as MMN;

(c) JWN is hereby appointed as the child's legal guardian in the event of death or incapacity of the applicant before he is of full age or fully self-reliant;

(d) The Registrar General is directed to enter this adoption in the Adopted Children Register;

(e) The child shall be presumed to be Kenyan having been abandoned at Kimbimbi Sub-county Hospital in Kirinyaga in Kenya; and

(f) The guardian *ad litem* is hereby discharged.

DATED and **DELIVERED** at Nairobi this **9th day of MAY 2019**

A.O. MUCHELULE

JUDGE