



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**FAMILY DIVISION**  
**ADOPTION CAUSE NO. 34 OF 2016**  
**IN THE MATTER OF CHILDREN'S ACT 2001**  
**AND**  
**IN THE MATTER OF ADOPTION OF CHILD AJ**

**BY**

**FKM.....APPLICANT**

**JUDGMENT**

1. The applicant is a single female applicant of 49 years of age seeking to adopt a male child. She separated from her ex -husband in 2004 and does not have a child of her own. She filed an originating summons on 10<sup>th</sup> March 2016 seeking to be allowed to adopt the male child.
2. Child AJ was presumed to have been born on 27<sup>th</sup> January 2010 and abandoned at Fatima Maternity Hospital. The matter was reported at Ongata Rongai Police Station vide Occurrence Book Number [xxxx]. He was admitted at Fatima Children's Care and Nutrition Centre on 2<sup>nd</sup> February 2010. He was transferred to Thomas Barnardo House on 13<sup>th</sup> August 2014. The child was committed to Thomas Barnardo House for Care and Protection on 12<sup>th</sup> September 2014 by the Resident Magistrate's Children's Court vide Protection and Care Cause No.282 of 2014. He was declared free for adoption under **section 156(1)** of the **Children's Act** by the Kenya Children's Homes Adoption Society's Case Committee on 12<sup>th</sup> November 2014 and a Freeing Certificate Serial Number [xxxx] issued. He was placed under the care of the applicant for mandatory bonding prior to adoption on 2<sup>nd</sup> December 2014 where he has been under the continuous care of the applicant since.
3. The court on 9<sup>th</sup> March 2017 appointed JMM as guardian *ad litem* and ordered that she files a report after carrying out a social inquiry on the applicant. A similar report was sought from the Director of Children Services. Both reports were duly filed. The Director of Children's Services filed their first report where they failed to recommend the adoption on grounds that despite the applicant having met most of the legal requirements for local adoption as per the Children's Act, there was no initial police letter provided save for the OB number and no explanation as to why it was not availed.
4. The applicant filed a supplementary affidavit dated 22<sup>nd</sup> March 2019 where she attached the initial letter from Ongata Rongai Police Station. On the 17<sup>th</sup> April 2019, the Director of Children's Services filed a supplementary report where they recommended the adoption. That adoption society stated the special circumstance applicable to this case was that; the applicant was the only person available to adopt the child. They recommended the adoption arguing that it will not be in the best interest of the child to be separated from the applicant.
5. I have looked at the reports and the recommendation by the adoption agency all of which recommend the adoption. They describe the applicant as a caring and responsible parent, financially stable and sexually and morally fit to adopt the baby.
6. The court has taken note the sex of the baby, being a male and the adoptive mother a female. Section **158 (2) (b)** Children's Act does not allow a sole female adult to adopt a male child unless there are exceptional circumstances to justify the making of the order. Although the Act does not specifically list the envisioned exceptional circumstances, the national adoption committee issued guidelines on 13<sup>th</sup> January 2010 thus specifying circumstances that may warrant adoption of a child of the opposite gender by an applicant. Among the exceptions in relation to a sole female applicant wishing to adopt a male child are:

***(1) When the child is a relative***

*(2) When the child has special needs and the applicant is willing and has capacity to take care of the child*

*(3) Where the applicant has adopted or has another biological child or children over whom she is willingly exercising parental responsibility*

*(4) Where the child to be adopted has a sibling who is also being adopted by the applicant*

*(5) Where the Proposed applicant is the only person available to adopt the child*

*(6) 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.*

7. In the instant case the child was committed to Thomas Barnardo House for Care and Protection on 12<sup>th</sup> September 2014 and was declared free for adoption on 12<sup>th</sup> November 2014 and placed under the care of the applicant for mandatory bonding prior to adoption. According to the adoptive agency, **the applicant was the only person available to adopt the child.**

8. The court notes that the applicant is a Kenyan citizen who is aged 49 years which age is perfectly within 25 years and 65 years being the age bracket recommended under Section 158 (1) (b). Both stake holders found her medically, physically, spiritually and financially fit. The applicant is staying in her house providing a cool and conducive environment for growth.

9. The applicant appeared before court was interrogated and made aware that once the adoption order is made, it shall be final and binding during the lifetime of the child and that the child shall have the right to inherit her property an obligation she understood very well. That she shall not be able to give up the child owing to any subsequent unforeseen behaviour or other changes in the child.

10. 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 borne to her. This court dispenses with the consent of the child's biological parents as the child was found abandoned and nobody has showed up claiming him.

11. 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) That the applicant FKM is hereby allowed to adopt Child AJ;**

**b) That the child AJ shall henceforth be known as NM;**

**c) That the child's date of birth shall be 27<sup>th</sup> January 2010, shall be presumed to have been born at Fatima Maternity Hospital Ongata Rongai hence presumed to be a Kenyan by birth;**

**d) That PM is hereby appointed to be the child's legal guardians in the event of death or incapacity of the applicant before he is of full age and fully self-reliant;**

**e) That the Registrar-General is directed to enter this adoption in the Adopted Children Register; and**

**f) That the guardian *ad litem* is hereby discharged.**

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 6<sup>TH</sup> DAY OF JUNE 2019**

**J.N. ONYIEGO**

**JUDGE**