



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**ADOPTION CAUSE NO. 121 OF 2015**

**IN THE MATTER OF THE CHILDREN'S ACT, 2001**

**AND**

**IN THE MATTER OF MN (MINOR)**

**AND**

**MKM.....APPLICANT**

1. **MKM** (herein referred to as the Applicant) approached the court by way of Originating Summons dated 12<sup>th</sup> May, 2015 pursuant to Section 154,158 and 168 of the Children's Act 2001 seeking the following orders:

- a. That the Honourable court be pleased to appoint ASM of Post Office Box Number [xxxx], Mutomo as the Guardian Ad Litem for the infant MN.**
- b. THAT the Director of Children Services do file an evaluation and assessment report on the infant and on the suitability of MKM as the adoptive parent.**
- c. THAT the Applicant MKM be authorized to adopt MN.**
- d. THAT if the adoption order is granted the said infant be known as RMM.**
- e. THAT the Registrar do enter the said proposed name in the Adoption Register.**
- f. THAT the costs of this application be in the cause**

2. The Application is supported by an affidavit sworn on the 12<sup>th</sup> May 2015 and a statement of particulars. The Applicant is a Kenyan single lady, aged 50 years of old. She averred that she was once married but her husband abandoned her and married another woman behind her back as she could not naturally sire children. She is now divorced and does not have any children of her own. The motivation for this adoption is to fill the gap of not having a child of her own and also to have somebody to inherit her property.

5. The Applicant is a farmer who also operates a small business of selling fruits and vegetables from 1999 to date. Her monthly income is Kes 50,000. She also owns a piece of land in Kitui and has several goats as well.

6. The child the subject of these proceedings was found abandoned on the 19<sup>th</sup> April 2006 at Endebess Trading Centre. She was rescued and the matter reported to Endebess Police Station. She was then referred to Child Welfare Society of Kenya (CWSK) under OB NO. [xxxx]. The minor was placed temporarily at Birunda Rescue Centre on the same day for protection and care.

7. Vide A letter dated 13<sup>th</sup> August 2013 by CWSK and record sheets by Birunda Village Community Project dated 19<sup>th</sup> April 2013 it was revealed that efforts to trace the parents through home visits were not fruitful.

7. The minor was committed to Thomas Barnado Children's Home on 31<sup>st</sup> January 2014 vide protection and care case no 16 of 2014 at Kitale Magistrates Court.

8. By a letter dated 17<sup>th</sup> March 2014, Endebess Police confirmed that to that date, nobody had shown up to look or claim the child.

8. The child was freed for adoption by the Kenya Children's Home Adoption Society case committee held on the 15<sup>th</sup> April, 2014, and a

certificate freeing the child issued on the 13<sup>th</sup> November 2014, in compliance with **Section 159(1) (a) (i)** of the **Children Act** which states that:

***“Abandonment may be presumed if the child appears to have been abandoned at birth or if the person or institution having care and protection of the child has neither seen nor heard from a parent or guardian of the child for a period of at least six months.”***

9. The minor was then placed with the Applicant on 20<sup>th</sup> April 2014. On 21<sup>st</sup> July 2016, AM was appointed as Guardian Adlitem to the baby and the Director Children services directed to file an assessment report to the baby.

11. The Guardian Ad Litem filed her report supporting the application by the applicant herein for adoption of the minor. Equally, the children department filed their report dated 29<sup>th</sup> November 2018 thus supporting the adoption based on the materials presented to them namely:

- a. Age assessment.
- b. Letter by Child Welfare Society dated 13<sup>th</sup> August 2013.
- c. Birunda Village Community Project case record sheet dated 19<sup>th</sup> April 2013.
- d. Admission to Thomas Barnados House dated 1<sup>st</sup> February 2014.
- e. Medical Admission Form & Birunda Centre medical summary.
- f. HIV Results.
- f. Committal order dated 31<sup>st</sup> January 2014.
- h. Thomas Barnados committal request letter dated 10<sup>th</sup> January 2014.
- i. Committal request summary dated 31<sup>st</sup> January 2014.
- i. Final Police letter dated 17<sup>th</sup> March 2014.

13. During the hearing, the applicant urged the court to give her an opportunity to adopt the baby whom she fondly referred to her daughter. She appeared to understand and appreciate the consequences of adoption which includes inheritance of her property.

14. I have carefully considered the Originating Summons together with the reports filed herein. Issues for determination are; whether the baby is available for adoption; whether the applicant is fit to adopt the baby, and whether the adoption is in the best interest of the baby.

14. The baby herein was found having been abandoned in the market place by an unknown person. Despite every effort to trace the parents or any known relative the same has not been fruitful. This is evidenced from the attached police initial and final letters Endebe's police station. Article 14(4) of the constitution provides that, any child found in Kenya who is, or appears to be, less than eight years of age, and whose parents are not known, is deemed to be a Kenyan citizen by birth.

15. Section 157(1) of the children Act equally recognizes that any child who is a resident within Kenya may be adopted whether or not the child is a Kenyan citizen. Since nobody is claiming the baby, it is my finding that the child is available for adoption and that consent is therefore dispensed with.

16. As to whether the adoptive mother is suitable, both stake holders' reports are favourable. She is a Kenyan citizen thus qualifying the adoption as local adoption. In terms of age, she is 51yrs old and therefore within the age bracket of not less than 25yrs nor more than 65 yrs in accordance with section 158 of the children Act. She is a Christian with no criminal record, stays in her own house and economically stable. I am satisfied that she has met the necessary legal requirements for the adoption of the baby.

17. Concerning the best interest of the baby which is the principal consideration in any decision making process affecting a baby, Article 53(2) and section 4(2) &(3) of the children Act comes to play. **Section 4(2) of the Children Act 2011**, provides:

***“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.***

18. I am satisfied that the adoption herein is geared towards achieving the best interest of the baby. She needs basic needs such as food, clothing, education, medical care, shelter and generally parental care which is necessary for any human being to survive. Being an abandoned case, it is my finding that she has found a loving mother with whom she has fully bonded. To reject the application will disturb and or interrupt her normal life, identity and association. For all purposes and intents, the child shall be recognized as a daughter to the applicant.

In the matter of L.O (CHILD)[2012] eKLR the court had this to say:

*“For the avoidance of doubt, the rights and duties of the biological parents of the child are hereby extinguished and all the parental rights, duties, obligations and liabilities of the child, JMM , now vest in and shall be exercisable by and enforceable against the Applicants as the adopter parents as if the child were born in wedlock to the adopter parents and the child, to all intents and purposes, now stands to the adopter parents as a child born in wedlock and both adopter parents shall henceforth be the lawful father and mother of the child.”*

19. Accordingly, it is my holding that the applicant has satisfied this court that the application is merited and I do allow the same with orders as follows:

- i. That the applicant is hereby authorized to adopt baby MN who henceforth shall be known as RMM**
- ii That her date of birth shall be 10<sup>th</sup> January 2008 and place of birth Endebes within Kitale Kenya.**
- ii. That the Registrar General shall enter this adoption in the Adoption Register.**
- iii. That an order of adoption be issued to the Applicant herein.**
- iv. That the court hereby appoints KM and NN brother in-law and sister to the applicant respectively as the legal guardians to take care of the minor in the event of death or incapacitation of the applicant.**
- vii. That the guardian ad litem, be discharged forthwith.**

**DATED, DELIVERED AND SIGNED AT NAIROBI THIS 18<sup>TH</sup> DAY OF JULY 2019**

**J.N.ONYIEGO**

**JUDGE**