



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION
ADOPTION CAUSE NO. 28 OF 2018
IN THE MATTER OF THE CHILDREN ACT, 2001
AND
IN THE MATTER OF BABY BF aka BABY J
IN THE MATTER OF AN APPLICATION FOR ADOPTION
BY
CAA.....APPLICANT

JUDGEMENT

1. The applicant is a single Kenyan woman aged 45. She is employed as a teacher at [particulars withheld]. She has never been married. However, she had a relationship with the father of her children but this did not work out. Her children are BA. (25 years), BF. (23 years), AF. (21 years) and JCT (9 years). On 13th March 2018 she filed the Originating Summons seeking to be allowed to adopt the Baby BF alias Baby J.

2. Baby BF alias Baby J was presumably born on the 25th September 2015 and abandoned at birth. He was found abandoned within free area of Nakuru by a good Samaritan who took him to Section 58 Police Patrol Base and made a report which was booked in the Occurrence Book number 9/01/10/2015. Efforts were made to trace the parents of the child but in vain. Nairobi Women's Hospital kept the child for five days and requested New Life Home Trust Nakuru (Milimani) to admit the child. The child was committed to New Life Home Trust on 26th October 2015 by the Nakuru Children's Court in **C & P case No. 407 of 2015**. The child was declared free for adoption under **section 156(1)** of the **Children's Act** by Change Trust on 24th June 2016 vide Certificate Number **xxxxx**. The final police letter dated 7th July 2016 confirmed that no one had laid claim on the baby. On 5th August 2016 the child was placed in the applicant's custody. He has continuously been residing with the applicant since.

3. The court on 7th June 2018 appointed BMA as guardian *ad litem* and ordered that he 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, and each recommended that the applicant be allowed to adopt the child. The reports found that the applicant was socially, emotionally and financially stable and suitable to adopt the child. It was also found that the child and the applicant had bonded well.

4. The court takes note of the sex of the baby. He is a male and the applicant is 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 13th 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; and

6) where the applicant is the legal guardian of the child or children appointed by will or in adoption proceedings and the parents died or become permanently incapacitated.

5. In the instant case, the applicant is a mother of four children. Secondly, the Baby sought to be adopted is HIV positive who requires special care. The applicant is willing and has capacity to take care of him. I note from the report the applicant has secured medical cover through AAR to cater for the medical needs of the baby and also a nanny who stays in the house.

6. The court finds that it is in the best interest of the child to be adopted by the applicant. The applicant has demonstrated her capability 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 parent of the child once adopted, and shall treat him as if he was borne to them. 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 behaviour or other changes in the child. This court dispenses with the consent of the child's biological parents as the child was found abandoned. The applicant's children have consented to the adoption.

7. 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 CAA is hereby allowed to adopt Baby BF alias Baby J.;

b) Baby BF alias Baby J. shall henceforth be known as BJoO;

c) the child's date of birth shall be 25th September 2015, and shall be presumed Kenyan by birth having been abandoned at Nakuru in Kenya;

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

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

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

DATED and DELIVERED at NAIROBI this 11th day of JULY, 2019.

A.O. MUCHELULE

JUDGE