



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

ADOPTION CAUSE NO. 66 OF 2015 (OS)

IN THE MATTER OF THE CHILDREN ACT, 2001

AND

IN THE MATTER OF BABY B.

IN THE MATTER OF AN APPLICATION FOR ADOPTION BY

FMK.....APPLICANT

JUDGMENT

1. The applicant FMK is a single Kenyan woman aged 45. She is a business lady. She and her late husband got married under Kamba customary marriage on 1st August 1998. The marriage was solemnised on 8th September 2012. Her husband died on 25th December 2013. They had no child. The applicant filed the originating summons dated 6th March 2015 seeking to be allowed to adopt the male child herein.

2. Child B. was presumably born on the 18th July 2012 vide birth certificate number 03*****. He was found abandoned on 19th July 2012 at Muigai Inn near Juja by a good samaritan who took him to a nearby clinic for cord ligation and check-up. The matter was reported at Juja Police Station and booked on the Occurrence Book number 40/19/07/2012. The child was committed to Thomas Barnardo House on 8th August 2012 by the Thika Chief Magistrate's Court in Protection and Care Case No. 136 of 2012. Juja Police Station confirmed that efforts to trace the mother of the child were not successful, and no one had ever gone to the station to claim the child. The child was declared free for adoption under **section 156(1)** of the **Children's Act** on 17th April 2013 by Kenya Children's Home Adoption Society vide Certificate Number [particulars withheld]. On 5th July 2013 the child was placed with the applicant and the late husband and has continuously been residing with the applicant from that time up to date.

3. The court on 15th October 2015 appointed T S M 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, and each recommended that the applicants 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 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 born 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. The applicant is now a widow. However, I consider that that the adoption process begun when her husband was alive. Bonding begun then. She is qualified to adopt the boy child.

5. 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 FMK is hereby allowed to adopt Child B.;
- b) Child B shall henceforth be known as Bradley Mwendwa Mutithya;
- c) the child's date of birth shall be 18th July 2012, and shall be presumed Kenyan by birth having been abandoned at Juja in Kenya;

d) SMN 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