



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

ADOPTION CAUSE NO. 7 OF 2015

IN THE MATTER OF THE CHILDREN ACT, (2001) CAP 141 LOK

AND

IN THE MATTER OF THE ADOPTION OF

BABY M (*NOT HIS REAL NAME*).....MINOR

BY

INTENDED ADOPTIVE FATHER.....1ST APPLICANT

AND

INTENDED ADOPTIVE MOTHER.....2ND APPLICANT

JUDGMENT

The Applicants, the INTENDED ADOPTIVE FATHER and MOTHER sought by the Originating Summons dated 29th January 2015, supported by their affidavit in support and joint statement of the same date, orders allowing them to adopt BABY M (hereinafter the child). I have chosen to depart from the use of initials to hide the identity of the parties herein for good reason. One, there is no legal requirement to use initials. The requirement is that the identity of the parties shall not be revealed. Section 76(5) of the Children's Act states;

*In any proceedings concerning a child, whether instituted under this Act or under any written law, a child's name, identity, home or last place of residence or school shall not, nor shall the particulars of the child's parents or relatives, any photograph or any depiction or caricature of the child, be **published or revealed**, whether in any publication or report (including any law report) or otherwise.*

I find referring to parties by initials alone, dehumanizing. The right to a name should also translate to a proper pseudonym. In my humble view the pseudonym gives a human face to the party, while initials, just by themselves are cold letters.

That said, the Applicants are husband and wife aged 57 and 53 years respectively at the time of the application. Though they are Christians they married under Kikuyu customary law in on 2nd January 1980 as supported by the joint affidavit sworn on the 10th Day of September 2014. They are self-employed farmers who reside together in [particulars withheld], Nyeri. They have no biological children of their own hence their reason for seeking this adoption.

The child in this matter is presumed to have been born in December 2008 at an unknown place, by unknown parents. According to the Social inquiry report filed by the Child Welfare Society dated 9th January 2014, the child was rescued by police officers from Muthaiga Police Station on 11th July 2009, after having been found abandoned near their station. The matter was booked at the police station vide OB no. 58/11/07/009. The child was admitted to Kiambu District hospital on 12th July 2009, and on 5th August 2009, the child was committed by the children's court Kiambu, vide P&C case no xxxx to Child Welfare Society of Kenya Mama Ngina Kenyatta Children's Home for care and protection.

The police vide their letter of 21st December 2009 declared that no one had come to ask after or claim the child. The CWSK also declared that they had been unable to trace the parents or relatives.

On the 14th May 2010 CWSK placed the child on temporarily '*on foster care, custody and guardianship after rescue* 'with the prospective adoptive parents, the applicants herein.

The child was declared free for adoption under s. 156 (1) of the Children Act Cap 141 Laws of Kenya, by CWSK, vide certificate serial no. xxxxx , dated the 9th July 2014, four years and eight months from the date he was found abandoned near Muthaiga Police Station.

The child remained in continuous custody and care of the applicants since 2010.

In an application filed on 29th January 2015 the Applicants sought orders that their neighbour and friend be appointed as the child's *guardian ad litem* and that the Director of Children's Services be ordered to investigate the suitability of the Applicants to adopt the child and submit their report. On 22nd July 2015 this Court issued an order appointing the *guardian ad litem* and further directing the Director of Children's Services to prepare a home study report in respect of the applicants and the child for submission to the court.

When the matter came before me on the 9th November, 2017, I found that the CWSK home assessment was done in 2014, and the one by the Director of Children services in 2015. Both had filed their social inquiry reports, the former dated 9th July 2014 and filed on 22nd July 2014, the latter dated 12th August 2015 and filed on 13th August 2015. All the statutory reports filed in respect of the proposed adoption found the applicants suitable persons to be the parents of Baby M, and recommended that they be allowed to adopt the child.

After hearing the application and seeing the applicants, I was of the view that the two reports for 2014 and 2015 were a bit old and could not present the current status of the child and the prospective adoptive parents. I directed that an updated report be filed by the Children Officer within whose jurisdiction the family was living, and the same be filed on or before the 19th December 2017.

The same was duly filed. It confirmed the position of the previous reports, the child having now lived with the applicants for about seven years.

The application is with respect to a local adoption. The Applicants have fulfilled all the legal requirements relating to the adoption of the child. The consents of the biological parents of the child required by section 158(4) were dispensed of vide section 159(1) (a) (i) of the of the Children Act, Cap 141 Laws of Kenya.

I have considered each of the home visit reports by the *guardian ad litem*, the Adoption Society and the two by the Children officers representing the Director Children's Services. These have established first, that the child's parents or relatives cannot be traced, hence making him free for adoption, second, he has lived with his adoptive parents since he was about 1 ½ years old, third, they have grown into a family, fourth, the applicants have been able to provide for the children both emotionally and financially, for his upkeep and education and most importantly he knows no other parents and calls them Mum and Dad. Being self-employed farmers, they have had all the time to be with the child. They are God fearing, upstanding member s of their community and in good health. The child has been described in the various reports to be in safe hands, to have found a true home, to be thriving under the applicants' care, and to be spoken of highly by his parents. I had an interaction with the 'family' in chambers during the hearing. These observations were not contradicted.

It goes without saying that the need for parental care, love and protection is basic for every child. Through its fulfilment the child's chances of survival, growth and fulfilment are assured. That is why we have found it necessary to legislate the right to get it and the duty and obligation to provide it. In the Children's Act, every child has a right to be the protection and care of his or her parents according to the children Act. The Katiba at Article 53 provides for the rights of the child including the right to parental care and protection. The Children Act provided an exposition of these rights and it is clear from the definition of parental responsibilities at section 23, the first call for the realisation of these rights is within a family setting. That is why, where it is not available in its natural setting, we have provided for it in the Act as alternative care, fostering, guardianship and ultimate adoption. This child herein has so far been able to enjoy those rights ensuring his right to survival and development.

From the foregoing I persuaded that it would be in the best interests of the child to allow this application for adoption. With the order in force the applicants will now take up the full responsibility that comes with parenthood, and the child, the place that many take for granted, of being his parents' child, and to take up the duties that come with that position as well.

To that end, I make the following orders;

1. The application for adoption is granted and intended adoptive parents are hereby allowed to adopt Baby M (not his real name).
2. His date of birth shall be presumed to be 1st December 2008
3. His name shall be M G G
4. His place of birth shall be Kiambu County
5. He will be presumed to be a Kenyan Citizen by birth
6. The Registrar General is directed to duly enter this order in the Adoption Children Register
7. The guardian ad litem is hereby discharged.

It is so ordered.

Dated, delivered and signed this 2nd Day of February 2018 at Nyeri.

Teresia M Matheka

Judge

In the presence of;

Court Assistant: Harriet

The 1st Applicant