



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
ADOPTION CAUSE NO. 5 OF 2016 (O.S)
IN THE MATTER OF THE CHILDREN ACT
AND
IN THE MATTER OF ADOPTION OF BABY M
AND
IN THE MATTER OF AN APPLICATION FOR ADOPTION ORDER BY G K AND M W M

JUDGMENT

Baby M, an infant (Baby M), was found abandoned at [Particulars withheld] area, at Karatina in Nyeri County, on 3rd March, 2003. The infant was estimated to be a day old. Good Samaritans handed him over to Karatina police station where he was booked in the occurrence book as No. [Particulars withheld]. The police took him to Karatina District Hospital pending his placement. In March 2004, the child was placed into the foster care of applicants herein, **G M K** and **M W M** and has since remained in their care.

By a letter dated 12th September, 2012, the police at Karatina confirmed that since 2003 when the infant was rescued nobody had turned up to lay any claim on the child and despite their efforts the police had been unable to trace the child's biological parents or any of them.

It is against this background that by an originating summons dated 11th October, 2016 and filed in court on the same date, the applicants sought to adopt the child who is now a teenager.

According to the applicants, they are a married couple. As at 11th October, 2016 when they filed their application, they were respectively aged 55 and 53. They have never had a biological child or any other child of their own and it is for this reason that they are desirous of adopting Baby M. They have committed themselves to providing care, protection and upkeep of the child. They have sufficient income to cater for the child's shelter, clothing, food and education.

The Director of Children Services made enquiries on the applicants and the minor and established that the prospective adoptive father is the third born in a family of nine. He resides with his wife and his brothers on an 8-acre parcel of ancestral land. The applicants married in 1982 and they have lived together as husband and wife ever since. He established that the prospective adoptive mother, could not beget any children because her fallopian tube had been damaged.

The applicants were also found to be financially stable, the Director established that they earn approximately Kshs 20,000/= per month and have additional monthly income from their rental properties in Chaka township. With this income, the Director opined that the couple would be able to cater for

themselves and also their prospective adopted son.

The director also established that the child has been with the prospective adoptive parents since 25th of March 2004 and as of last year, 2016, he was in class seven. According to him, the child has been well taken care of and he knows no other parents other than the applicants. As a matter of fact, he refers to them as mum and dad respectively. In his estimation, they bonded well and they all live in three-bedroom stone house which is connected to water and electricity.

Having maintained the child for the last twelve years, so the Director concluded, the applicants had demonstrated that they are capable of bearing parental responsibility of Baby M.

It was the director's view that the adoption will give the child an opportunity to be part of a family where he has people whom he can refer to as his parents rather than live a solitary life in an institution. In the report, he filed in court, the Director recommended that the adoption order be granted.

Change Trust, an Adoption Society was represented in the proceedings by Ms Aveline Kariuki; she produced a certificate of registration showing the society was duly registered under section 177(1) of the Children Act. The Society had assessed the applicants and found them suitable to adopt Baby M; she also filed her report and a certificate under **section 156(1)** of the **Children Act** declaring Baby M free for adoption.

The applicants themselves informed the court that they are aware of the import of an adoption order and in particular the child's right to inheritance. They undertook to treat the child as their own and accord him all the rights he would be entitled to if he was their own biological child.

The court had the opportunity to interact with the child. He acknowledged the applicants as his parents and that they have provided him and continue to provide him with all his basic needs. The court noted that the child is happy and healthy. He spoke fluently and appeared to be well disposed.

Having considered the reports by the Adoption Society and the Director of Children Services together with all the pleadings filed in court and having heard the applicants, I am persuaded that the applicants' application is merited and the adoption of the child would be in his best interest. I am also satisfied that the pertinent conditions stipulated under **section 158** of the Children Act have been complied with and the necessary consents have been obtained; I am also convinced that both the applicants understand the consequences of making the adoption orders herein. There is no doubt that the applicants fully understand their responsibilities towards the child.

In the premises, I order that the child, Baby M, be and is hereby adopted by the said applicants. I further order that the said minor be renamed **J W M** and the Registrar General is ordered to make the appropriate entries in the Adopted Children Register accordingly.

Signed, dated and delivered in open court this 17th day of February, 2017

Ngaah Jairus

JUDGE