



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ADOPTION CAUSE NO. 19 OF 2016
IN THE MATTER OF THE CHILDREN ACT, 2001
AND
IN THE MATTER OF BABY M J (MINOR)
A A M APPLICANT

JUDGMENT

A A M (“**the Applicant**”) is a sole female applicant. She is a medical doctor employed as Senior Technical Advisor- Clinical Care by [particulars withheld]. The Applicant has never been married. She had been blessed with two children from a previous relationship, a son, R Je O born on 14th June 2005 and a daughter, A A A born on 2nd November 2007 who passed away on 17th July 2012 due to illness. The Applicant is sympathetic to the needs of needy children and therefore wishes to provide a home for a needy child. She also wants to expand her family through adoption.

The Applicant seeks by her application to be allowed by this Court to adopt Baby M J (hereafter “**the child**”). The child who is the subject of the present adoption proceedings was found abandoned together with his twin brother at Kihoto Estate within Naivasha town on 17th September 2014. They were presumed to have been aged two (2) months at the time. A report on the matter of the abandoned children was made at Naivasha Police Station and the same was recorded vide OB No. 13/17/09/2014. The child was referred to Limuru Children Center where they were admitted on the same day for care and protection and this is evidenced by the child’s admission form into the said children center. The child’s twin brother however passed away on 9th December 2014 after choking while asleep.

The Chief Magistrate Children's Court sitting at Naivasha, in accordance with **Section 119** of the **Children Act**, committed the child to Limuru Children Center on 14th January 2015 vide **P&C No. 4/2015**. The child was placed in the custody of the Applicant on 5th June 2015 for mandatory bonding prior to adoption. The child has since then been in the continuous custody and care of the Applicant. According to correspondence from relevant police authorities at Naivasha Police Station, no one has come forward to claim the child.

A report to that effect has been filed in Court. Thus, this Court dispenses with the consent of the child’s biological parents to the proposed adoption of the child by the Applicant. The adoption society, Kenya Children’s Home issued a certificate declaring the child free for adoption pursuant to **Section 156(1)** of the **Children Act**. The said freeing certificate is no. 1256 and the same is dated 20th May 2015.

In an application filed on 12th February 2016, the Applicant sought among others, orders from this Court

that M K K be appointed as the child's guardian ad litem, and that the Director of Children's Services be ordered to investigate the Applicant's suitability to adopt the child and submit a report. She further sought for an order that upon adoption the child be known as C J O Mc. The Applicant also sought to have the Court appoint her sister, J C A and her brother-in-law T O as the child's legal guardians. On 16th June 2016, this Court issued an order appointing M Ka K as the child's guardian ad litem, and further directing the guardian ad litem and the Director of Children's Services to file their respective reports in Court.

Pursuant to **Section 156(1)** of the **Children Act**, before this matter came up for hearing, Kenya Children's Home, the relevant adoption society, prepared and filed in Court a favorable report in respect of the proposed adoption of the child by the Applicant. Another report in respect of the proposed adoption of the child by the Applicant was prepared by the Director of Children's Services, and this report was similarly in favor of the proposed adoption. The guardian ad litem, M K K, also filed the statutory report made under **Section 160(2)** of the **Children Act** in which she noted that the proposed adoption of the child by the Applicant is in the best interest of the child.

This is a local adoption. The Applicant, a single female applicant wishes to adopt a male child. Under **Section 158(2)** of the **Children Act**, an adoption order shall not be issued in favor of a sole female applicant in respect of a male child unless the court is satisfied that there are special circumstances that justify the making of such adoption order. The Adoption Committee established under **Section 155(1)** of the **Children Act** issued guidelines on 13th January 2010 with regard to circumstances that the court will take into account in determining whether the sets of facts put forward by the Applicant fulfills the criteria of special circumstances.

In the case of a sole female applicant adopting a male child, the following are circumstances which may be considered as special:

- 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. Proposed applicant is the only person available to adopt the child.**
- 6. Where the applicant is the legal guardian of the child or children appointed by will or in adoption proceedings and the parents die or become permanently incapacitated.**

In the present case, the reports filed by the adoption agency, Kenya Children's Home and the Director of Children's Services indicate that the Applicant has a biological child over whom she is willingly exercising parental responsibility. This creates a special circumstance prescribed by the Adoption Committee and on that ground, the adoption is justified and is in the best interests of the child.

It is evident that the Applicant has fulfilled all the legal requirements relative to the adoption of the child. The consent of the biological parents of the child was dispensed with since the child was abandoned at birth, and his biological parents could not be traced to give their consent.

This Court has satisfied itself that the Applicant is qualified and able to take care of the child. The Applicant attached financial documents, medical documents and employment details to the application. The home visits by the guardian ad litem, the Adoption Society and the Director of the Children's Services established that the Applicant has the financial, social and emotional capability to provide for the upkeep and education of the child. This Court observed the Applicant with the child in Court and it was evident that in the period that the Applicant has had the custody of the child, the child has bonded well

with her. The child considers the Applicant to be his mother.

On the basis of a careful examination of the documents presented before me as well as the observations made therein, this Court has formed the opinion that it would be in the best interest of the child to be adopted by the Applicant. Hence, this Court allows the Applicant's application.

The Applicant, A A M, is hereby allowed to adopt Baby M J. Henceforth, the child shall be known as C J O M. His date of birth shall be 17th July 2014.

His place of birth shall be Naivasha within Nakuru County. He is presumed to a citizen of Kenya by birth. The Applicant's sister, J C A and her brother-in-law T O shall be the legal guardians of the child should such eventuality arise. This Court directs the Registrar General to duly enter this order in the Adoption Register. The guardian ad litem is hereby discharged. It is so ordered.

DELIVERED SIGNED & DATED AT NAIROBI THIS 13TH DAY OF FEBRUARY 2017.

M. W. MUIGAI

JUDGE

In presence of:-