



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
IN THE MATTER OF THE CHILDREN ACT 2001
AND
IN THE MATTER OF BABY P ALIAS P M M (THE CHILD)
ADOPTION CAUSE NO. 272 of 2015

JUDGMENT

1. **R N M** hereinafter to as the applicant seeks to be authorised to adopt baby P hereinafter referred to as the child. She also seeks that if the order is granted the child be known as P M M, that the child be presumed to be a Kenyan and that the Registrar General be directed to enter the adoption in the Adopted Children Register.

2. The applicant is a Kenyan citizen born in 1954. She was previously customarily married but the marriage broke. She states in her statement that she is physically and emotionally fit and healthy to parent a child. That she is a small scale farmer with the financial ability to provide for the child and that she has not been charged with nor convicted of a criminal offence or any offence referred to in the Third Schedule of the Children Act 2001. She has had care and control of the child for more than eleven (11) years. She states that the special circumstances for adopting the child are;

- i. She has had the care and control of the child for more than eleven (11) years.*
- ii. The child knows no other family other than the family that has provided for him.*
- iii. That her siblings fully accept the child as a part of the family as attested by the aforementioned legal guardian consent*
- iv. That she has written a will leaving all her properties to the child in the event of her demise.*

3. The child in this matter was reportedly abandoned by his mother at Missionaries of Charity compound on the 16th of January 2000. This was recorded vide ref. no. [particulars withheld] by Muthaiga Police Station on the 10th of April 2000. The child was admitted at Missionaries of Charity Children's Home on the 16/1/2000. He was committed to the said home vide committal order P& C No. [particulars withheld] dated the 28/5/2014. The child was placed with the applicant for mandatory bonding period prior to adoption on the 7th of August 2004 through a duly signed foster care agreement form from the home and he has lived with the applicant continuously since then. The child was placed with the applicant at 3 years and 8 months and they have lived together up to now when the child is 16 years old. The child is aware of the proposed adoption and has no problem with it. He has given his consent, KKPI adoption Society declared the child free for adoption on the 30th of July 2014 vide certificate no. [particulars withheld].

4. KKPI adoption Society filed its report on the 12/2/2016. The report states that the child was placed with the applicant on the 7/8/2004 as per the care agreement and the child was declared free for adoption on the 30/7/2014. The child has been under the care and control of the applicant since the 7/8/2004 and has enjoyed parental love, care and good nurturing accorded to him by the applicant. The applicant is happy with the child and states that he has added joy to life. The applicant has her own home and is financially stable, she is healthy and has no criminal record. KKPI recommends the adoption stating that applicant has met the legal adoption requirements as per the Children Act 2001 and that she has proved capable of taking on parental responsibility over the child. The agency observes that though the applicant is a sole female applicant adopting a male child, that following the guidelines for special circumstances by the adoption committee discussed on the 13/1/2010 **“when the proposed applicant is the only person available to adopt the child”**. The child had been living in the children’s home from infancy until he was about four years old. That the child has been in the custody of the applicant for over 10 years and has known the applicant as his mother, thus they recommend the adoption.

5. The guardian ad litem report too is favourable and recommends the adoption. In her report she states that the applicant loves the child and enjoys parenting and that the applicant and the child have bonded well. That the child has fully settled in the applicant’s home and is well taken care. That the applicant desire is that the child inherits her property upon her demise.

6. The Director of Children Services filed their report on the 10/8/2016. The report states that the applicant is 62 years, was married traditionally but got divorced due to inability to give birth. That the child is aware of the adoption and has no problem with it. She is financially stable and has no criminal record. The report recommend the adoption and states that the applicant has proved capable of taking on parental responsibility over the child. That the applicant is a sole female applying to adopt a male child, that though they recommend the adoption the court may consider the special circumstances as suggested in the Adoption Committee’s document dated the 13th of January 2010.

7. The applicant is a single female seeking to adopt a male child in this regard the court has to consider whether the applicant has fulfilled the requirement of Section 158 (2) which provides that, *“An adoption order shall not be made in favour of the following persons unless the court is satisfied that there are special circumstances that justify the making of an adoption order—*

(a)

(b) *a sole female applicant in respect of a male child;*”

8. After considering all the reports I note that there is no report of abuse or mistreatment as against the applicant. The said child has thrived well under her care from the time he was three years old. What the applicant seeks to do is provide a home for a needy boy and bring him up in a loving home set up. The child is aware of the adoption and has no objection. On the special circumstance I note the capability of the applicant to raise the child and also that she could have been the only available person to adopt the child. The report by the Department of Children’s services and The Guardian ad-litem reports are both favourable and find that the applicant is morally stable and capable to raise the child. They also recommend that it is in the child’s best interest to be adopted by the applicant.

9. The Applicant **R N M** is hereby allowed to adopt **P alias P M M** and he shall henceforth be called **P M M. M N M** be the legal guardian of the child in the event of death or incapacity of the applicant before the child is of age. I direct the Registrar General to enter this order in the adoption register. The child was born in Kenya and is therefore a Kenyan by birth and is entitled all the rights that accrue to Kenyan citizens under the Kenya Constitution 2010 and the Kenya citizenship and Immigration Act. I hereby discharge the Guardian ad litem. It is so ordered.

Dated Signed and delivered this 9th Day of February 2017

R.E. OUGO

JUDGE

In the presence of:

.....**For the Applicant**

Ms. Charity Court Clerk