



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 112 OF 2016 (OS)

IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001

IN THE MATTER OF ADOPTION OF BABY J K M

BY

A W M (APPLICANT)

JUDGMENT

1. The Applicant A W M is a Kenyan citizen. She is single and has one child, M K, aged 12 years from a previous marriage which was dissolved. She wishes to adopt the child known as Baby J K M a minor of the male sex through the Originating Summons dated 31st August 2016. The Applicant indicates that she is a marketing Director with [particulars withheld]. She resides in Kileleshwa, and is a Christian.
2. According to records held by the Makupa Police Station, the child who is the subject of these adoption proceedings was reportedly abandoned at Mburukenge village, Tudor location by his mother on 3rd December, 2008 as reported to the chief Tudor location. He was admitted to Child Welfare Society of Kenya, Mombasa, Mji Wa Salama Children's Home the same day. The matter was later recorded vide reference No. SEC-POL6/1/5/VOL1/106 on 4th December, 2011.
3. The child was declared free for adoption by Child Welfare Society of Kenya on 22nd October, 2013 as per Section 156 of the Children Act 2001 as confirmed by certificate serial No. [particulars withheld]. He was released into the custody of the Applicant for mandatory foster care pending adoption on 25th January, 2010 upon her signing a Foster Care Agreement dated the same day. Since then he has been in the continuous custody and care of the Applicant.
4. Prior to the hearing of the adoption application, Kenya to Kenya Peace Initiative prepared and filed a report in court declaring the Applicant suitable to adopt. Makupa Police in their letter dated 4th December, 2011 stated that following their investigations the biological parents of the child were not traced, nor did anyone come forward to claim the child.
5. The Adoption Society, guardian ad litem and the Director of Children's Services have all made home visits and established that the Applicant is financially and emotionally capable of providing for the up keep and education of the child.
6. The Director of Children's Service's report dated 6th February, 2017 recommended the adoption, for reasons that the child knows the Applicant as his parent and is attached to her. That he has also bonded well with the Applicant and her sibling, M. The guardian ad litem, Mr. S N N also filed a report dated 6th

December, 2016 that was favourable and recommended the adoption of the child by the Applicant.

7. The Adoption Society, guardian ad litem and the Director of Children's Services have all established that the Applicant is financially and emotionally capable of providing for the up keep and education of the child. I have noted that this is a case of a single female Applicant seeking to adopt a male child.

8. Under section 158(2) (b) of the Children Act an adoption should not be made of a male child to a single female applicant, unless there exist special circumstances that justify the making of an adoption order. The National Adoption Committee on 13th January 2010, by a letter of that date, formulated guidelines where special circumstances may be found for sole applicants, with respect to Section 158(2).

9. The special circumstances to be considered for a sole female Applicant adopting a male child are noted as follows:

- i. When the child is a relative,
- ii. When the child has special needs and the applicant is willing and has capacity to take care of the child,
- iii. Where the applicant has adopted or has another biological child or children over whom she is willingly exercising parental responsibility,
- iv. Where the child to be adopted has a sibling who is also being adopted by the applicant,
- v. The applicant is the only person available to adopt the child, and
- vi. 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.

10. The Applicant in this cause is not related to the child; neither does the child have special needs but the Applicant already has a biological child. I believe these are special circumstances that favor this adoption. I am satisfied that the sole female Applicant is not disqualified from adopting the male child in the circumstances.

11. The Director of Children Services' report recommended the adoption for reasons that the child stands to gain the opportunities provided by becoming the son of the Applicant. That if the adoption is granted the child will grow up in a loving home rather than in an institution. That the child having been abandoned it means that the biological parent did not desire to raise him. The Applicant's family also recommends the adoption.

12. Of note is that the orders sought by the Applicant relate to a child. In law, in any matter concerning a child, the best interests of the child are paramount. **Article 53(2)** of the **Constitution** provides the guiding principle on this question as follows:

“A child's best interests are of paramount importance in every matter concerning the child.”

This principle also finds expression in the **Children Act No. 8** of **2001** and in particular **Section 4(3)** thereof. The Applicant's opportunity or desire to have a child of her own is therefore only of secondary importance.

13. The child appears to have thrived and is in school. He is healthy and happy under the care of the Applicant. He was in court during the hearing and appeared to have bonded well with the Applicant. He clearly considers her as his parent. The court also observed that the Applicant being aged 46 years is older than the child who is now age 9 years by more than 21 years and is not yet above 65 years of age. She therefore meets the requirements of the law on age.

14. After a careful assessment of the reports filed herein and from the observation of the interaction of the Applicant and the child during the hearing, I am satisfied that it is in the best interest of the subject child to be adopted by the Applicant.

15. In the premise I find that it is in the best interest of the child herein that I allow, as I hereby do, the application brought by way of Originating Summons dated 31st August 2016 and order as follows:

i. The Applicant A W M is hereby allowed to adopt baby **J K M** who shall henceforth be known as **J M M**.

ii. His date of birth is presumed to be 3rd December, 2007. He is presumed to have been born in Kenya, and the place of birth shall be Mombasa.

iii. T M K (ex-husband of the Applicant), is hereby appointed legal guardian of the child in the event that the Applicant dies or is incapacitated by ill-health.

iv. The Registrar General is hereby directed to enter this order in the Adoption Register.

v. The Director of Immigration is hereby authorised to issue the child with a Kenyan passport.

vi. The guardian ad litem is hereby discharged.

It is so ordered.

SIGNED DATED and DELIVERED in open court this **6th day of April 2017**.

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L. A. ACHODE

JUDGE

In the presence ofAdvocate for the Applicant