



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ADOPTION CAUSE NO. 157 OF 2016 (OS)
IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001
IN THE MATTER OF ADOPTION OF BABY M Z

BY

N M (APPLICANT)

JUDGMENT

1. The Applicant N M is a Kenyan citizen. She is single and has no child of her own. She wishes to adopt the child known as Baby M Z a minor of the female sex through the Originating Summons dated 1st December, 2016. The Applicant indicates that she is an Economist with [Particulars withheld]. She resides off Waiyaki Way and she professes the Christian faith.
2. According to records held by the Makongeni Police Station, the child who is the subject of these adoption proceedings was found by Good Samaritans having been abandoned at [Particulars withheld], Kiganjo area in Thika. The matter was reported at Makongeni Police Station and recorded vide OB No. [Particulars withheld]. The child was admitted at Thika Level 5 Hospital on 22nd April, 2015 and later discharged to Limuru Children's Home. She was officially committed to the said Home on 3rd May 2015 by the Thika Children's Court, vide P&C No. 105 of 2015.
3. The child was declared free for adoption by Change Trust Adoption Society on 4th June, 2016 as per Section 156 of the Children Act 2001 as confirmed by certificate serial No. [Particulars withheld]. She was released into the custody of the Applicant for mandatory foster care pending adoption on 21st June, 2016 upon her signing a Foster Care Agreement dated the same day. Since then she has been in the continuous custody and care of the Applicant.
4. Prior to the hearing of the adoption application, Change Trust Adoption Society prepared and filed a report in court declaring the Applicant suitable to adopt. Makongeni Police Station in their letter dated 16th November, 2015 to the Director Limuru Children Centre 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 13th February, 2017 recommended the adoption, for reasons that the child knows the Applicant as her parent and is attached to her. That she has also bonded

well with the Applicant. The guardian ad litem, Mr. S O O also filed a report dated 20th December, 2015 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 to provide for the up keep and education of the child.

8. The Director of Children Services' report recommended the adoption for reasons that the child stands to gain the opportunities provided by becoming the daughter of the Applicant. That if the adoption is granted the child will grow up in a loving home rather than in an institution and the import of having been abandoned is that the biological parent did not desire to raise her.

9. 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.

10. The child appears to have thrived and is healthy and happy under the care of the Applicant. She was in court during the hearing and appeared to have bonded well with the Applicant and clearly considered her as her parent. The court also observed that the Applicant being aged 41 years is older than the child who is now age 2 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.

11. 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.

12. 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 1st December, 2016 and order as follows:

- i. The Applicant N M is hereby allowed to adopt Baby M Z who shall henceforth be known as **N M**.
- ii. Her date of birth is presumed to be 21st April, 2015 and her place of birth shall be Thika, in Kenya.
- iii. A O and C M (Applicant's friends), are hereby appointed legal guardians 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