



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MURANG'A
ADOPTION CAUSE NO 3 OF 2015
IN THE MATTER OF AN APPLICATION FOR AN ADOPTION
ORDER IN RESPECT OF BABY M
AND
IN THE MATTER OF THE CHILDREN'S ACT, CAP141
J N M.....APPLICANT

R U L I N G

1. The Applicant herein, **J N M**, applied by originating summons dated 23/02/2015 for an adoption order in respect of a child called **Baby M**. She also sought ancillary orders that the consent of the child's biological mother be dispensed with; that the child be declared a Kenyan citizen; that upon the making of the adoption order the child be known by the name **M B K**; and that the **Registrar-General** do make appropriate entry in the ***Adopted Children's Register***.
2. The Applicant is a widow born in 1949. That makes her now about 67 years old. She is a farmer in Kiambu Country who grows tea, coffee and also keeps cows and chickens. She is a Kenyan citizen and a Christian of the Presbyterian denomination. She has one biological child who is an adult called M W M. M. has consented to the adoption order sought and has been checking on her mother and the child sought to be adopted from time to time.
3. The Applicant owns some 6½ acres of land at Githunguri in Kiambu Country where she lives with the child and farms. She has a monthly income from her farming activities of about KShs 15,000/00. 6½ acres of land at Githunguri in Kiambu Country is, relatively, a considerable amount of land in such a high potential area in close proximity to the outskirts of Nairobi City and Thika Town.
4. The Child was found abandoned in *[particular withheld]* and rescued on 17/06/2006. He had apparently been born only a few days before. He is now about 11 years old. Efforts of the Kenya Police and the ***Child Welfare Society of Kenya*** to trace his parent(s) were fruitless, and no one has ever come forward to claim him. A medical examination of the Child after rescue found him otherwise healthy. He was placed with ***Happy Life Children's Home, Nairobi*** for foster care. On 21/09/2007 he was committed by court to the Home vide ***Nairobi Children's Court Protection and Care Case No. 140 of 2007*** for a period of 3 years. The Child remain with Happy Life Children's Home until 15/04/2010 when he was placed with the Applicant for fostering pending adoption. He has been under the care, protection and upbringing of the Applicant until today.

5. I have read all the affidavits and other papers placed before the court in support of the order of adoption sought. I have also read the **Home Study Report** dated 07/12/2012 by the Child Welfare Society of Kenya, a duly registered adoption society, and the **Home Visit Report** dated 04/04/2016 by the **Kiambu County Children's Co-ordinator**. Both reports are favourable to the adoption order sought.

6. The Applicant being about 67 years old, and the Child about 11 years old, she is at least 21 years old. The requirement of **section 158(1) (a)** of the **Children's Act, Cap 141** is therefore met. But the Applicant is a sole female applicant in respect of a male child and is over 65 years old. The adoption order sought can thus be made only if the court is satisfied that there are special circumstances that justify the same. See **section 158(2) (b) & (c)** of the Act.

7. The Applicant is healthy and is not of unsound mind within the meaning of the **Mental Health Act, Cap 248**. She has never been charged and convicted by a court of competent jurisdiction of any of the offences set out in the **Third Schedule** to the Act or similar offences. She is not a homosexual and is a Kenyan citizen. She thus satisfies the requirements of **section 158(3)** of the Act.

8. As already seen, the Child was abandoned soon after birth and efforts to trace his parents did not bear any fruit. Nobody has ever come forward to claim him. For the four (4) years that he remained in foster home nobody came forward to request to adopt him.

9. The Applicant has taken very good care of the Child from April 2010, a period of over six (6) years. He is healthy and in school, and the two reports already referred to show that the Child is very happy with the Applicant whom he holds as his mother.

10. I consider that removing the Child from the care and protection of, and upbringing by the Applicant would cause him great mental and emotional harm. If adopted by the Applicant the Child faces a certain and secure future, complete with financial arrangements already in place for his education, and valuable landed property available to be inherited by him.

11. I consider all the above to be special circumstances that justify the making of the adoption order sought. There is no doubt at all that the order would be in the best interests of the welfare of the Child.

14. I will therefore grant the adoption order sought. The child is hereby declared a Kenyan Citizen and shall henceforth be known by the name **M B K**. The Registrar-General shall make the necessary entry in the **Adopted Children's Register**. It is so ordered.

DATED AND SIGNED AT MURANG'A THIS 8TH DAY OF SEPTEMBER 2016

H P G WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 9TH DAY OF SEPTEMBER 2016