



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 295 OF 2014 (OS)

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

IN THE MATTER OF ADOPTION OF BABY P

BY

L W K (APPLICANT)

JUDGMENT

1. The Applicant L W K is a Kenyan citizen. She is single and has no child of her own. She wishes to adopt the child known as Baby P, a minor of the male sex through the Originating Summons dated 10th December, 2014. The Applicant indicates that she is a Skills Instructor at Missions of *[particulars withheld]*. She resides at *[particulars withheld]* in Nairobi.
2. The child who is the subject of this adoption proceedings was found abandoned in *[particulars withheld]* area in Kasarani by a Good Samaritan named E K on 10th December, 2012 and was about seven months old. She was rescued by the Good Samaritan who made a report at Sunton Police Station. An entry was made to that effect vide OB 12/10/12/2012 of Sunton Police Station.
3. The child was handed over to Happy Life Children's Home on 19th December, 2012 for care and protection. He had a skin condition that required medical attention. He was later officially committed to the same Home on 8th January, 2013, by the Resident Magistrate Children's Court Nairobi, vide committal warrant No. 39 of 2013. The biological parents of the child have not been traced.
4. The child was declared free for adoption by Little Angels Network Adoption Society on 4th December, 2013 as per Section 156 of the Children Act 2001 and is confirmed by certificate serial No. *[particulars withheld]*. He was released into the custody of the Applicant for mandatory foster care pending adoption on 11th December 2013. Since then he has been in the continuous custody and care of the Applicant.
5. Prior to the hearing of the adoption application, Little Angels Network, an adoption society, prepared and filed a report in court dated 31st July, 2013 declaring the Applicant suitable to adopt.
6. 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.
7. The Director of Children's Service's report dated 21st October, 2015 recommended the adoption, for reasons that the child stands to gain from the opportunities available to him by becoming the son of the

Applicant, as opposed to life in an institution. The guardian ad litem, M/s. S M M also filed a report that was favourable and recommended the adoption of the child by the Applicant.

8. The Director of Children's Services reported that the Applicant does not have children of her own and therefore adopting the child herein will present the best opportunity for her to have a child. The child having been abandoned by the roadside at Kasarani when he was seven months old means that the biological parent did not desire to raise him.

9. The court notes that the subject is a male child and the Applicant is a single female. **Section 158(2)** of the **Children Act** provides for category of persons in favour of whom an adoption order may not be made unless there exists special circumstances as follows:

“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) A sole male applicant in respect of a female child;

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

(c) an applicant or joint applicants who has or both have attained the age of sixty-five years;

(d) a sole foreign female applicant.”

10. From the report of the Director for Children Services the court notes that the child stayed in a children's home until he was placed with the Applicant later. That the applicant was the only person available for this child and who showed a desire to adopt him because of a skin condition that he had and which is now under control because of the Applicant's care. The child is said to be developing very well.

11. The Director for Children's Services recommended that the Applicant be allowed to adopt Baby Patrick as a sole female Applicant for the foregoing reasons.

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 secondly importance.

13. 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, this court has formed the opinion that it would be in the best interest of the child to be adopted by the Applicant.

14. The child appears to have thrived and is healthy and happy under the care of the Applicant. The child was in court during the hearing and appeared to have bonded well with the Applicant. He clearly considered her as his parent. The court also observes that the Applicant being aged 52 years, she is older than the child by more than 21 years and is not yet above 65 years of age. She therefore meets the requirements of the law on age.

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 10th December, 2014 and order as follows:

i. The Applicant L W K is hereby allowed to adopt baby P, who shall henceforth be known as M K.

- ii. His date of birth is presumed to be 10th June, 2012.
- iii. He is presumed to have been born in Kenya in accordance with **Article 14 (3)** of the **Constitution**, and the place of birth shall be *[particulars withheld]*.
- iv. J K, a nephew to the Applicant is hereby appointed legal guardian of the child in the event that the Applicant dies or is incapacitated by ill-health.
- v. The Registrar General is hereby directed to enter this order in the Adoption Register.
- vi. The Director of Immigration is hereby authorised to issue the child with a Kenyan passport.
- vii. The guardian ad litem is hereby discharged.

It is so ordered.

SIGNED DATED and **DELIVERED** in open court this **3rd day** of **November, 2016**.

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L. A. ACHODE

JUDGE