



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS

ADOPTION CAUSE NO 18 OF 2014

AND

IN THE MATTER OF THE CHILDREN ACT

AND

IN THE MATTER OF BABY S

FMM.....APPLICANT

JUDGMENT

The applicant FMM is a Kenya single female, 35 years of age at the time of her application and she seeks to adopt a child known for the purposes of these proceedings as Baby S. The Applicant has moved the Court in this regard by way of an Originating Summons dated 21st August 2014, brought under section 154 of the Children Act. The Applicant also filed a Chamber Summons of the same date seeking the appointment of JMM to act as guardian *ad litem* in respect of the adoption of Baby S and that the Director of Children's Services do prepare a home study report for submission to the Court. These orders were granted by this Court on 14th October 2014.

A summary of these adoption proceedings is as follows. Baby S was found abandoned around [particulars withheld] on 11th May 2012 and a report of the abandonment made on the same day to Shauri Moyo Police Station. On 24th May 2012 the child was placed under the care and protection of Hope House Babies Home by the District Children's Office at Kamukunji and later formally committed to the home by the Nairobi Children's Court. The police reported that they were unable to trace the parents and/or relatives of Baby S who was declared free for adoption by the Child Welfare Society of Kenya (hereinafter referred to as "the Adoption Society") by their certificate dated 26th May 2014. Baby S was placed with the Applicant on 26th May 2014.

The Applicant is currently a tutor at [particulars withheld] Youth Polytechnic under the Ministry of Education Science and Technology. She is a single mother with one biological child DM born in 2002. The Applicant is desirous of adopting Baby S for reasons that she cannot give birth to another child due to medical complications. In addition she would wish to adopt the child for company in her old age and to inherit her properties.

To facilitate this adoption FMM and FKM, a sister of the Applicant, filed consents in Court to be the guardian *ad litem* and legal guardian respectively of Baby S. The Adoption Society also prepared a report dated 26th May 2014 declaring the child free for adoption, which report was filed in Court on 13th October 2014. It was recommended in the said report that Baby S is presumed to have been abandoned pursuant to section 159(1)(a) of the Children Act, as no parent and/or relative of the child had been found

or had come to claim him since he was rescued. Further, that adoption would serve the child's best interest as he would be provided with alternative family care and have a chance to be brought up within a family setting.

The Director of Children Services through the Children Officer, Makueni District, also filed a report in Court dated 7th May 2015, upon orders of this Court. The report recommended that the Applicant had fully bonded with Baby S and that the child was well taken care of, in good physical health and was provided with the basic needs. Further that the child was comfortable and friendly with the other children in the homestead and the Applicant was ready and capable of taking care of and educating the child.

Lastly, the guardian *ad litem* J M M filed a report in Court on 7th May 2015 in which he reiterated the observations made by the Children Officer as to the child bonding with the Applicant, and being well taken care of.

Having evaluated the facts of this adoption application, I note that it is a local adoption and that the Applicant is a single female applicant who wishes to adopt a male child. Under Section 158(2)(b) of the Children Act, an adoption order shall not be issued in favour of a sole female applicant in respect of a male child, unless the court is satisfied that there are special circumstances that justify the making of such adoption order. The Adoption Committee established under Section 155(1) of the Children Act issued guidelines on 13th January 2010 with regard to circumstances that the court will take into account in determining whether the sets of facts put forward by an applicant fulfils the criteria of special circumstances.

In the case of a sole female applicant adopting a male child, the following are the guidelines on the circumstances which may be considered as special:

1. When the child is a relative.
2. When the child has special needs and the applicant is willing and has capacity to take care of the child.
3. Where the applicant has adopted or has another biological child or children over whom she is willingly exercising parental responsibility.
4. Where the child to be adopted has a sibling who is also being adopted by the applicant.
5. Where the proposed applicant is the only person available to adopt the child.
6. 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.

In the present case, Baby S has no record of any known person willing to adopt him. No one in his biological family has claimed him thus far. The Applicant also has another biological child over whom she is willingly exercising parental responsibility. This creates special circumstances and on that ground, the adoption is justified and is in the best interests of the Baby S.

The applicant has fulfilled all the legal requirements relating to the adoption of Baby S. This court is also satisfied that the applicant is qualified and able to take care of Baby S. The home visits by the guardian *ad litem*, the Adoption Society and the Director of the Children Services established that the Applicant has the financial and emotional capability to provide for the upkeep and education of the child. The reports filed in Court pursuant to these visits also do recommend the Applicant's home as an ideal permanent home for the child. Lastly, this court observed the Applicant with Baby S in court, and it was evident that the two had bonded well.

This court therefore forms the opinion that it would be in the best interest of Baby S to be adopted by the Applicant. Consequently, the Applicant shall assume all parental rights and duties of the biological

parents in respect of the adopted child, and shall treat the adopted child as if he was born to her. The Applicant has also been made aware that once the adoption order is made it shall be final and binding during the lifetime of the child, and that the child shall have the right to maintenance and to inherit her property. The adoption order once made is absolute and irreversible, and the Applicant cannot give up the child owing to any subsequent unforeseen condition or other changes in the child.

I accordingly allow the application for adoption. The Applicant FMM is hereby allowed to adopt Baby S. The consent of the biological parents of the child is hereby dispensed with in accordance with section 159(1)(a)(i) of the Children Act, since they remain unknown. The child shall henceforth be known as SMM. JKM a sister of the Applicant, shall be the legal guardian of the child should such eventuality arise. As the child was found abandoned in Kenya, he is hereby declared Kenyan by birth. The Registrar-General is directed to enter this adoption order in the adoption register. I hereby also discharge the guardian *ad litem*.

It is so ordered.

Dated, signed and delivered in open court at Machakos this 6th day of October, 2015.

P. NYAMWEYA

JUDGE