



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
ADOPTION CAUSE NO. 9 OF 2013

IN THE MATTER OF THE CHILDREN ACT

AND

IN THE MATTER OF THE ADOPTION OF G (A CHILD)

BY

B F A.....APPLICANT

JUDGMENT

The applicant herein **B F A** has filed in court the chamber summons dated 15th May, 2013 seeking the following orders

- “1. THAT the applicant B F A be authorized to adopt the child G.**
- 2. THAT upon the making of the adoption order the child be known as G A O.”**

The application was heard by way of *vive voce* evidence. By an order made on 4th November, 2013 **A O** was approved as ‘*Guardian ad litem*’. Section 156(1) of the Children Act, 2001 provides as follows:

“156(1) No arrangement shall be commenced for the adoption of a child unless the child is at least six weeks old and has been declared free for adoption by a registered adoption society in accordance with the rules prescribed in that behalf.”

Although the exact date of birth of the subject child is not known he was estimated to have been born in November, 2005. Therefore the child was aged about 8 years old by May, 2013 when this application was filed. He was therefore well over the six week age limit provided by section 156(1). Annexed to the application is a certificate No. [particulars withheld] dated 19th November, 2012 issued by the Child Welfare Society of Kenya, declaring the child free for adoption. I am satisfied that the legal prerequisites for adoption have been met and that this matter is properly before the courts.

The applicant testified in court on 3rd December, 2013. She is a 52 year old woman a nurse by

profession currently employed by KenGen Limited. The applicant told the court that she has never been married. She did bear a daughter in 1979 but unfortunately the child passed away at the age of 5 years and she has never borne another child since then. The applicant met the child in the year 2007 at the Child Welfare Society Home in Embu where she was then working. In the year 2009 the child was placed in her custody under a fostering arrangement. She has lived with and provided for the child since then. Upon her transfer to Mombasa in June, 2009 she moved with the child and has enrolled him in school. The applicant is a mature woman who is of the Christian catholic faith. She is an active member of St. Lumumba's parish in Mikindani. She is in stable employment and she also has a rental house in Buru Buru Estate in Nairobi thus she has sufficient income to provide for the needs of a child. Annexed to the application was a certificate of Good Conduct issued by the Kenya Police which proves that the applicant is a law-abiding citizen. A home visit conducted by the Children Department revealed that the applicant lives in a two-bed roomed rental house which is spacious, secure and well furnished. It was found to be suitable to raise a growing child. She has employed a house help to care for the child while she is away at work. The applicant is close to her siblings and indicates that they support and welcome her decision to adopt a child. Upon questioning by the court the applicant confirmed that she fully understands the legal consequences of an adoption order. She said that she is ready to accord the child all rights due to a biological child including the right to inherit.

The subject child whose name was given as 'G M' was found abandoned at the age of approximately 3 weeks old on 5th November, 2005 near Runyenjes police station in Embu. He was presented to the Embu Children's Court as a child in need of care and protection and was later handed to the custody of the Child Welfare Society Home in Embu. He was taken care of at the home until the applicant met him and took him into her care. To date no person has come forward to claim this child and his biological mother remains unknown. In all matters concerning children this court is under an obligation to give priority to the **best interests** of the child. This was a child who was abandoned shortly after birth. Even now 8 years later no person has come forward to claim him. He faced an uncertain future in a Children's home. The applicant has taken him in and has provided him with a stable and loving home. As I observed the child has bonded with the applicant and refers to her as 'mum'. He knows no other parent. The adoption clearly serves his best interests. However the court must take into account section 158(2) (b) of the Children Act which provides

“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.”**

Here we have a case of a sole female applicant seeking to adopt a male child. Care must be taken to ensure that the best interests of the child are upheld and protected. The court must consider whether any special circumstances exist which would support this adoption. In my view such special circumstances do exist. Firstly the child has already lived with the child since 2009 a period of four (4) years. The child as I mentioned earlier has already bonded with her and knows her as his only parent. An enquiry conducted by the Child Welfare Society and the Children's Department revealed nothing adverse and/or prejudicial to the child's welfare. It was obvious even to myself that this child has well been cared for. He appeared healthy and happy. He has been enrolled in school. For all those four (4) years the applicant has met all his needs and requirements. To remove the child now from the only home he knows and to return him to an institution will be traumatic and will be a major setback to his development. The applicant has expressed a desire to have a male child to inherit her wealth. She is mentally and medically fit. The Child Welfare Society which is a registered adoption agency in Kenya has assessed the applicant and found her to be a suitable adoptive parent. For the above reasons I am satisfied that the special circumstances of this case do warrant the allowing of the adoption application. Lastly the court has to consider if any consents to this adoption are required. This is the case of a child who was abandoned. His biological parents/relatives remain unknown. In the circumstances I invoke section 159(1) (a) of the Children Act and waive any requirement for a consent. Finally I do authorize the adoption of the child G by this applicant. I allow the chamber summons dated 15th May, 2013 in terms of prayers (1) and (2). No order on costs.

Dated and delivered in Mombasa this 9th day of May, 2014.

M. ODERO

JUDGE

In the presence of:

Applicant in person

Court Clerk Mutisya