



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Adoption Cause 88 of 2011

IN THE MATTER OF THE CHILDREN'S ACT

(NO. 8 OF 2001)

AND

IN THE MATTER OF BABY BWM also known as MA

JUDGEMENT

JFMM, is a single applicant, who is Kenyan citizen. She seeks to adopt a Kenyan male child, known for the purposes of these proceedings as Baby BWM also known as MA. Her Originating Summons is dated 10th June 2011.

Baby BWM also known as MA is an abandoned child. He was born on 11th April 2006. He had been admitted at the Kenyatta National Hospital on 11th April 2007 when his mother, F of Eastleigh, abandoned him in the hospital ward on 16th April 2007, that is five days after admission. He was said to have been about one (1) year by then. The matter of the abandonment was reported at the Kenyatta Police Post, from where he was referred to the Thomas Barnado House for care and protection. The children's court was to later formally commit him to that institution on 29th February 2008. He was placed with the applicant and her late husband, AMW, for the mandatory bonding period on 20th June 2008. The applicant's husband died sometime in September 2010, leaving the child under the sole care of the applicant. This explains how the applicant has ended up being a sole applicant for adoption of a male child. Police records indicate that he has not so far been claimed by anyone. Consequently, he has been freed by the Kenya Children's Home Adoption Society by their certificate dated 7th August 2008. This background is set out in the statement in support of the application as well as the affidavit of the applicant verifying the statement.

To facilitate this adoption, the applicant has been assessed by the guardian *ad litem*, M.K.W, and the Director of Children Services. These two have compiled and filed their reports in court, dated 4th April 2012 and 5th November 2012, respectively. All these reports are favourable and recommend the proposed adoption. The applicant has filed documents that demonstrate that she has the financial and emotional capability and capacity to take care of the child. The child appears to have bonded well with her and he considers her to be his parent.

I take cognisance of the fact applicant is female and she seeks to adopt a male child. Section 158(2) (b) of the Children Act bars the adoption of a male child by a single female. But the law allows a window for such child being adopted by a single female. This would be in cases where there exist special circumstances that justify such an adoption. The Children Ct has not defined special circumstances, by the

Adoption Committee established under Section 155 of the Children Act has come up with guidelines which define what the special circumstances entail.

On 13th January 2010 the Adoption Committee formulated guidelines where special circumstances may be found for sole applicants for the purposes of Section 158(2).

The special circumstances to be considered for sole female applicant adopting a male child are:

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

I note that the applicant is not related to the child; neither does the child have special needs. I also note that the applicant does not have other children and has not previously adopted other children.

This case is unique in the sense that when the adoption process commenced with the placement of the child as required by section 152 of the Children Act, the sole applicant's husband, AMW, was alive and was part of the process. The couple had approached the adoption agency involve on 23rd March 2008. The agency made a visit to the residence of the couple and conducted a home study of the couple on 23rd March 2008. On 12th March 2008 the society approved the couple suitable potential adoptive parents. The child, herein, MA also known as BWM, then at the Tomas Barnado House, was placed with the couple on 20th June 2008. The applicant's husband passed away on 15th September 2010 before the commencement of the court process. By then the child had been with the couple for two years. The sole female applicant, who had bonded with the child, chose to carry forward with the process that she had started with her late husband. The applicant and child have been together since 20th June 2008, more than four now. It would not be in the best interests of both to separate them. I am satisfied that the sole female applicant is not disqualified from adopting a male child in the circumstances, and should be permitted to adopt the male child in this case.

In the opinion of this court it would be in the best interests of the child that he is adopted by the applicant. The applicant will be able to provide a home and a family for the child to grow up in and thereafter be a useful member of the family. Consequently, the applicant shall assume all parental rights and duties of the biological parents in respect of the adopted child; she shall treat the adopted child as if he was born to her. The applicant has 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 inherit her property. The applicant cannot give up the child owing to any subsequent unforeseen behaviour or other changes in the child.

I am satisfied that all the legal requirements have been met. The court allows the applicant's application to adopt the child. The consent of the biological parents of the child is hereby dispensed with. The applicant, JFMM, is hereby allowed to adopt the child, Baby BWM also known as MA. He shall hereafter be known as BWM. MKW shall be the legal guardian of the child in the event of the untoward happening to the applicant. The Registrar-General is directed to enter this adoption order in the adoption register. The guardian *ad litem* is hereby discharged.

DATED, SIGNED and DELIVERED at NAIROBI this 2ND DAY OF May, 2013.

W.M. MUSYOKA

JUDGE