



REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAIROBI

ADOPTION CAUSE NO. E120 OF 2021

IN THE MATTER OF THE CHILDREN'S ACT 2001

IN THE MATTER OF ABANDONED CHILD ALIAS BABY G ALIAS GRM (THE CHILD)

AND

IN THE MATTER OF AN APPLICATION FOR ADOPTION BY MMR (THE APPLICANT)

JUDGMENT

1. The Applicant MMR is a single woman who has never been married before. She has no biological children and wishes to adopt the male child known as Baby G alias GRM through Originating Summons dated 13th September 2021.

2. From the pleadings it is evident that the Applicant is well able to provide for an extra member of the family. She runs her own business and earns money from her rental properties. The Applicant currently resides in a gated estate in Juja and professes the Christian faith.

3. The record before the court indicates that the child in this matter was presumably born on 10th July 2017. The baby was abandoned by his mother after she left him in the motor vehicle of a man who had offered her a lift on 25th September 2017. The matter was reported at Plateau Police Patrol Base and was booked under OB No. xxxx/2017. The child was later taken to Moi Teaching and Referral Hospital for medical examination.

4. On 19th October 2017, the child was committed to Thomas Barnado House, Eldoret as a child in need of protection and care, by Eldoret Children's Court vide Case number xxxx of 2017. Plateau Police Station issued a final letter on 20th December 2018, in which they confirmed that the biological parents of the child could not be traced and neither did anyone come forward to claim the child.

5. Prior to hearing of the adoption application, Kenya Children's Homes Adoption Society prepared and filed a report dated 20th December 2018 declaring the child free for adoption. They subsequently filed a Freeing Certificate serial Number xxxx. The guardian ad litem JKM filed a report dated 23rd December 2021, which was favourable and recommended the adoption of the child by the Applicant.

6. Ezekiel Kimani, an officer from the office of the Director of Children Services conducted home visits and established that the Applicant is financially and emotionally capable of providing for the upkeep and education of the minor. He filed a report dated 22nd November 2021, recommending the adoption for reasons that the child stands to benefit from the opportunities provided by becoming a child of the Applicant. That he will gain a family and grow up in a stable home. The Applicant was found to have fulfilled the

statutory requirements for adoption.

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

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

8. From the report of the director of Children services, the court notes that the child stayed in a children's home until he was placed with the Applicant. The child had outgrown the institution and chances of him being placed with a couple were minimal. The child also has a congenital heart defect and the Applicant did not have any reservation to the child being placed with her. The applicant was the only person available for this child. The National Adoption Committee by a letter dated 13th January 2010, formulated guidelines where special circumstances may be found for sole applicants, with respect to **Section 158(2)**. The special circumstances to be considered for a sole female adopting a male child are noted as follows:

i. When the child is a relative

ii. When the child has special needs and the applicant is willing and has capacity to take care of the child

iii. Where the applicant has adopted or has another biological child or children over whom she is willingly exercising parental responsibility.

iv. Where the child to be adopted has a sibling who is also adopted by the applicant

v. The applicant is the only person available to adopt the child

vi. 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.

9. The director for Children's Services recommended that the Applicant be allowed to adopt the child for the foregoing reasons.

10. The consent of the biological parents was dispensed with since the child was abandoned at infancy and the parents could not be traced to give their consent.

11. JWK and MGW, by a sworn affidavit dated 13th September 2021, consented to being appointed legal guardians in the event that the Applicant dies or is incapacitated and cannot care for the child.

12. Article 53(2) of the Constitution, provides the overarching principle which must apply whenever any decision concerning a child is to be considered. It provides that:

“A child's best interests are of paramount importance in every matter concerning the child.”

This constitutional and internationally applicable principle is embedded and amplified in **Section 4(3)** of the Children's Act No.8 of 2001.

13. After careful assessment of the reports filed herein, it is my considered view is that it is in the best interest of the child to be adopted by the Applicant. Reasons wherefore, I allow the prayers sought in the originating summons dated 13th September 2021 and order as follows: -

- i. The Applicant MMR be and is hereby allowed to adopt Abandoned child alias Baby G Alias GRM who shall henceforth be known as GRM.
- ii. His date of birth shall be 10th July 2017 and he is presumed to have been born in Kenya in accordance with **Article 14(4)** of the Constitution of Kenya. Her place of birth shall be Nairobi.
- iii. JWK and MGW are hereby appointed as legal guardians in the event that the Applicant dies, or is incapacitated by ill health.
- iv. The Registrar General is directed to enter this order in the Adopted Children's Register.
- v. The Director of Immigration is hereby authorized to issue the child with a Kenyan Passport.
- vi. The guardian ad litem be and is hereby discharged.

SIGNED DATED AND DELIVERD IN VIRTUAL COURT THIS 24TH DAY OF FEBRUARY, 2022

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L.A. ACHODE

HIGH COURT JUDGE



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