



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

ADOPTION CAUSE NO. 82 OF 2017

IN THE MATTER OF THE CHILDREN ACT, 2001

AND

IN THE MATTER OF ADOPTION OF CHILD D.B.

AND

IN THE MATTER OF AN APPLICATION FOR ADOPTION BY

EK..... APPLICANT

JUDGMENT

1. The applicant is a Kenyan citizen aged 52. She is a business lady. She is single with no children. She filed the originating summons on 31st May, 2017 seeking to be allowed to adopt a male child, who is estimated to have been born on 8th April, 2013.

2. The child D.B. was found abandoned on 7th April, 2015 at [particulars withheld] village in Kakamega South District within Kakamega County. The matter was reported to Malaika Police Station on 8th April, 2015 vide O.B [particulars withheld]/2015. The child was then referred to PEFA Rehema Children's Home through Kakamega Children's Court on 8th April, 2015 vide Protection and Care Cause No.383 of 2015. The final police letter dated 6th November 2015 stated that no claim had been made by the child's biological parents or family. The child was declared free for adoption under **section 156(1)** of the **Children's Act** by Kenya Children's Home Adoption Society Services on 18th January, 2017 and was placed under the care of the applicant for mandatory bonding prior to adoption. He has been under the continuous care of the applicant since 20th February, 2017.

3. The court on 22nd November, 2017 appointed P K G as guardian *ad litem* and ordered that he files a report after carrying out a social inquiry on the applicant. A similar report was sought from the Director of Children Services. Both reports were duly filed. The reports found that the applicant was socially, emotionally and financially stable and suitable to adopt the child, and that the child and the applicant had bonded well. The guardian *ad litem's* report recommended that the applicant be allowed to adopt the child. The Director of Children Services' report however noted that the applicant has not fulfilled **section 158(2) b** of the **Children Act** which states that an adoption order shall not be made in favour of a sole female applicant in respect of a male child. The report recommended that the applicant be allowed to adopt the child if the court can be satisfied that there are special circumstances that justify the making of an adoption order.

4. The evidence on record shows that the applicant is a single lady and runs a bar and butcher business. She lives in a single room in Tassia Estate in Embakasi and shares her bed with the child. These circumstances are not suitable for the proper growth, development and adoption of the male child by the female applicant.

5. Further, in the application for adoption, the applicant did not demonstrate any special circumstance to justify the making of an adoption order, considering the restriction placed by **section 158(2) b** of the **Children Act**.

6. In view of the foregoing, the adoption is declined.

DATED and SIGNED at NAIROBI this 6TH day of MARCH 2018.

A.O. MUCHELULE

JUDGE

DATED and DELIVERED at NAIROBI this 8TH day of MARCH 2018.

R.E. OUGO

JUDGE