



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ADOPTION CAUSE NO. 297 OF 2014
IN THE MATTER OF THE CHILDREN ACT, 2001
AND
IN THE MATTER OF BABY I H

J A OAPPLICANT

JUDGMENT

J A O (“the Applicant”) is a sole female applicant. The Applicant has never been married. She is a business lady in Nairobi. She has no biological children of her own. She has however previously adopted another child through an adoption order issued by this court on 10th May 2013. She wishes to adopt another child so that her son can have a sibling.

The Applicant seeks by her application to be allowed by this Court to adopt Baby I H (hereafter “the child”). The child who is the subject of the present adoption proceedings was born on 21st May 2013 at the Kisumu East District Hospital. He was abandoned by his biological mother at the hospital’s new born unit when she absconded from the hospital. A report on the matter of the abandoned child was made at Kisumu Police Station and the same was recorded vide OB No. 43/29/5/2013. The incident was reported to the Kisumu District Children’s Officer who managed to secure a temporary placement for the child at the New Life Home Trust- Kisumu. The child was admitted at the said children’s home on 30th May 2013 for care and protection and this is evidenced by the child’s admission form into the said home.

The Principal Magistrate Children's Court sitting at Winam, in accordance with **Section 119** of the **Children Act**, committed the child to New Life Home Trust-Kisumu on 26th June 2013 vide **P&C No 190/2013**. The child was placed in the custody of the Applicant on 11th December 2013 for mandatory bonding prior to adoption. The child has since then been in the continuous custody and care of the Applicant. According to correspondence from relevant police authorities at Kisumu Police Station, no one has come forward to claim the child. A report to that effect has been filed in Court vide letter dated 3rd December, 2013. Thus, this Court dispenses with the consent of the child’s biological parents to the proposed adoption of the child by the Applicant. The adoption society, Little Angels Network issued a certificate declaring the child free for adoption pursuant to **Section 156(1)** of the **Children Act**. The said freeing certificate is no. **[particulars withheld]** and the same is dated 4th December 2013.

In an application filed on 17th December 2014, the Applicant sought among others, orders from this Court that V M be appointed as the child’s guardian ad litem, and that the Director of Children Services be ordered to investigate her suitability to adopt the child and submit a report. She further sought for an order that upon adoption the child be known as Z B O. The Applicant also sought to have the Court

appoint her sister E A O as the child's legal guardian. On 27th February 2015, this Court issued an order appointing V M as the child's guardian ad litem, and further directing the guardian ad litem and the Director of Children Services to file their respective reports in Court.

Pursuant to **Section 156(1)** of the **Children Act**, before this matter came up for hearing, Little Angels Network, the relevant adoption society, prepared and filed in Court a favourable report in respect of the proposed adoption of the child by the Applicant. Another report in respect of the proposed adoption of the child by the Applicant was prepared by the Director of Children Services, and this report was similarly in favour of the proposed adoption. The guardian ad litem, V M, also filed the statutory report made under **Section 160(2)** of the **Children Act** in which she noted that the proposed adoption of the child by the Applicant is in the best interest of the child.

This is a local adoption. The Applicant, a single female applicant wishes to adopt a male child. Under **Section 158(2)** 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 in regard to circumstances that the court will take into account in determining whether the sets of facts put forward by the Applicant fulfills the criteria of special circumstances. In the case of a sole female applicant adopting a male child, the following are 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. 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, the Applicant has previously adopted another child through an order issued by this court on 10th May 2013. For this reason, the Applicant's offer to adopt the child in this case falls under the special circumstance. It is evident that the Applicant has fulfilled all the legal requirements relative to the adoption of the child. The consent of the biological parents of the child was dispensed with since the child was abandoned at birth, and her biological parents could not be traced to give their consent. This Court has satisfied itself that the Applicant is qualified and able to take care of the child. 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. This Court observed the Applicant with the child in Court and it was evident that in the period that the Applicant has had the custody of the child, the child has bonded well with her. The child considers the Applicant to be his mother.

On the basis of a careful examination of the documents presented before me as well as the observations made therein, this Court has formed the opinion that it would be in the best interest of the child to be adopted by the Applicant. Hence, this Court allows the Applicant's application. The Applicant, J A O, is hereby allowed to adopt Baby I H. Henceforth, the child shall be known as Z B O. His date of birth is 21st May 2013. His place of birth shall be Kisumu East District Hospital. He is a citizen of Kenya by birth. The Applicant's sister, E A O shall be the legal guardian of the child should such eventuality arise. This Court directs the Registrar General to duly enter this order in the Adoption Register. The guardian ad litem is hereby discharged. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 17TH DAY OF MARCH, 2016

M. MUIGAI

JUDGE

In the presence of:

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