



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ADOPTION CAUSE NO. 38 OF 2016
IN THE MATTER OF THE CHILDREN ACT, 2001
AND
IN THE MATTER OF BABY O I (MINOR)

E W KAPPLICANT

JUDGMENT

E W K (“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 is sympathetic to the needs of needy children and therefore wishes to provide a home for a needy child. Thus, she wishes to adopt a child.

The Applicant seeks by her application to be allowed by this Court to adopt O I (hereafter “the child”). The child who is the subject of the present adoption proceedings is presumed to have been born on 10th May 2010. He was found abandoned on 12th May 2010 at [particulars withheld] area in Mukuru Kwa Njenga slums. A report on the matter of the abandoned child was made at Mukuru Police Post and the same was recorded vide OB No. [particulars withheld]. The child was then referred to Imani Children’s Home where he was admitted on 12th May 2010 and this is evidenced by the child’s admission form into the said home.

The Senior Resident Magistrate Children’s Court sitting at Nairobi, in accordance with **Section 119** of the **Children Act**, committed the child to Imani Children’s Home on 4th June 2012 vide **P&C No [particulars withheld]**. The child was placed in the custody of the Applicant on 31st August 2015 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 Mukuru Police Post, no one has come forward to claim the child. A report to that effect has been filed in Court. 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, Buckner Kenya Adoption Services issued a certificate declaring the child free for adoption pursuant to **Section 156(1)** of the **Children Act**. The said freeing certificate is no. [...] and the same is dated 13th July 2015.

In an application filed on 17th March 2016, the Applicant sought among others, orders from this Court that H G 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 L P K. The Applicant also sought to have the Court appoint her sister E S K as the child’s legal guardian. On 21st April 2016, this Court issued an order appointing H G

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, Buckner Kenya Adoption Services, 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, H G, 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 adoption agency, Buckner Kenya Adoption Services and the Director of Children Services have supported the Applicant's application. They have explained that the child had remained in the children's home for a period of over four (4) years without anyone coming forward to adopt him. They have urged this court to find that the Applicant's offer to adopt the child falls under the special circumstance as the Applicant could be the only person who is available to adopt the child. In considering the Applicant's application for adoption, the crucial inquiry therefore is what is for the welfare and interest of the child in the given circumstance. The court is alive to the abuses associated with adoptions and will only grant an order for adoption if it will serve the interests and long term welfare of the minor child. The evidence on record shows that the child was abandoned at birth. He was placed with the children's home where he remained for at least four (4) years. It is evident that the child is in need of a family to grow in and the Applicant is desirous of parenting him. The legislation on adoption makes it difficult for abandoned male children to be adopted other than by married applicants. From experience situation is made more difficult when the male child advances in age since even the married applicants prefer adopting female children. For this reason, I am persuaded that the child's adoption falls under the special circumstance that the Applicant may be the only person who is available to adopt the child.

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. The consent of the biological parents of the child was dispensed with since the child was abandoned at birth, and his biological parents could not be traced to give their consent. It is evident that the Applicant has fulfilled all the legal requirements relative to the adoption of the child.

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, E W K, is hereby allowed to adopt Baby O I. Henceforth, the child shall be known as L P K. His date of birth shall be 10th May 2010. His place of birth shall be Nairobi District. He is presumed to be a citizen of Kenya by birth. The Applicant's sister, E S K 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 AT NAIROBI THIS 13TH DAY OF OCTOBER, 2016

M. W. MUIGAI

JUDGE

In presence of:-

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