



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**ADOPTION CAUSE NO. 268 OF 2013**

**IN THE MATTER OF ADOPTION OF**

**W B A .....THE CHILD**

**BY**

**L D R.....1<sup>ST</sup> APPLICANT**

**AND**

**L S A A.....2<sup>ND</sup> APPLICANT**

**JUDGMENT**

1. The Applicants L D R and L S A A have applied to be authorized to adopt W B A hereinafter referred to as the child. The applicants are married. The child is the 2<sup>nd</sup> applicant's biological child. The applicants solemnized their marriage on the 5<sup>th</sup> of April 2013 having stayed together from 2007. The 1<sup>st</sup> applicant was married before but got divorced in 2001. The applicants have 4 biological children born between 2007 and 2012.
2. The child's biological father is said to have abandoned the 2<sup>nd</sup> applicant a few months after her birth in September 2000. It is stated that the child's father has not acknowledged his parental responsibilities over the child and that he has since moved to a location unknown to the 2<sup>nd</sup> applicant and that his whereabouts are unknown to date. From the agency report the 2<sup>nd</sup> applicant offered the child for adoption to her husband the 1<sup>st</sup> applicant because they intend to secure her future by giving her prospective adoptive father's name. It is also stated that the applicants wish to provide a sense of belonging to the minor. It is the recommendation of the adoption agency that the applicants come across as mature, responsible couple, emotional with adequate material resources to make a lifelong commitment to the child who has been part of their lives all through and that they are determined to see her succeed in all her life endeavors. The child has been in their continuous care and control of the applicants. The agency recognizes that the 1<sup>st</sup> applicant is past 65 years of age which is the upper age limit to adopt, but states that the applicants qualify to adopt under the special circumstances in accordance to Section 58 (1) (b) of the Children's Act 2001 and that since the 2<sup>nd</sup> applicant is the biological mother of the child the agency recommends the adoption. The child was declared free for adoption on the 15<sup>th</sup> of November 2013 and a certificate No. **[particulars withheld]** was issued.
3. The Director of Children's services in compliance with the court's order did their investigations and filed a report dated the 29<sup>th</sup> of October 2014. Their report has the background information

regarding the applicants. It was observed that bonding has taken place between the child and the 1<sup>st</sup> applicant, that the 1<sup>st</sup> applicant's children have given written consent to the adoption and that the 1<sup>st</sup> applicant's son G R is the proposed legal guardian. The report further states and I note that there is a letter to that effect dated the 30<sup>th</sup> of May 2012 from the Province of Ontario that they recognize an adoption that is legally completed within the laws of Kenya and will treat such a child as a full member of the adoptive family. The Director's recommendation is that this is a kinship adoption, that the applicants have fulfilled the legal requirements for a local adoption under the Children Act and that the adoption is in the best interest of the child as she will grow up in complete family setting .It is recommended that the adoption be allowed. The guardian ad litem's report is favorable.

4. The 1<sup>st</sup> applicant is currently 68 years old having been born in 1947. Section 158 (2) ( b) provides as follows;

***(2) "An adoption order shall not be made in favor of the following persons unless the court is satisfied that there are special circumstances that justify the making of the an adoption order-***

***(c) an applicant or joint applicants who has or both have attained the age of sixty-five years.***

As a court I have the discretion to allow the 1<sup>st</sup> applicant to adopt the child in this cause. What are the special circumstances therefore, in my view they are that the 1<sup>st</sup> applicant is married to the 2<sup>nd</sup> applicant who is the biological mother of the child, they have had the child in their care and control, the child consider the 1<sup>st</sup> applicant as a father, plus she has siblings. The child has also bonded well with the 1st applicant and the child being 14 years old has consented to the adoption. It is in the best interests of the child that the applicants adopt her, they have provided a home for her care and love her, the child has also bonded well with the 1<sup>st</sup> applicant, she is has been accepted by the 1<sup>st</sup> applicant's older son and there is the letter from province of Ontario giving an undertaking that it will recognize the adoption. I therefore allow the adoption. The consent of the biological father in respect of the child is dispensed with as he did not acknowledge her and cannot be traced.

5. The applicants **L D R** and **L S A A** are hereby authorized to adopt **W B A**. She shall henceforth be known as **W B A R**. **G D R** is appointed as the legal guardian of the child in the event of the applicants' death or incapacity before the child is of age and fully self reliant. The guardian ad litem is discharged. It is so ordered.

Dated signed and delivered this 23rd day of **January 2015**.

**R. E. OUGO**

**JUDGE**

In the presence of;

.....**For the Applicants**

.....**Court Clerk**