



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

**ADOPTION CAUSE NO. 279 OF 2014**

**IN THE MATTER OF ADOPTION OF BABY D S (CHILD)**

**And**

**IN THE MATTER OF THE APPLICATION FOR ADOPTION**

**BY**

**L A M (APPLICANT)**

**JUDGMENT**

1. The applicant is a Kenyan nationality born on 16<sup>th</sup> April 1982 in Mutoma District, Butere. She is single after separating with her husband in 2005 without any children due to what she claims was unexplained infertility. She is a Christian of Catholic denomination and is both physical and emotionally fit. She previously adopted daughter named S A M born on 20<sup>th</sup> February 2008 as evidenced by Adoption Cause No. 150 of 2010. And in essence this is the applicant's second adoption. That it is almost impossible for the applicant to conceive and since she has always desired having children and a family of her own, she opted to adopt and plans on enlarging the family. She is a businesswoman and owns a boutique and hair dressing boutique generating Kshs.80,000/- monthly. That the Little Angel's network conducted investigations into her life and gave their recommendations in their report dated 24th March 2014.
2. The child was found abandoned at Konyango in Manyatta estate on 03/10/2013. He was rescued by a good Samaritan one Gordon Otieno, a boda boda operator early in the morning. Gordon reported the incident at Kisumu police station vide occurrence book entry number 55/3/10/2013 as evidenced in a letter dated 8<sup>th</sup> October 2013. The Kisumu District Children's Officer secured a vacancy for the child at new Life home trust where he was admitted on 03/10/2013 pending committal. D S was committed into legal custody of New Life Home Trust on 15/01/2014 vide protection and care case number 14/2014 by the Senior Resident Magistrate's Court in Kisumu for a period of 3 years. The child, remained unclaimed for more than six months and still remains unclaimed to date hence provisions of section 159 (1) (a) (i) can be applied in this matter.
3. The Case Committee of Little Angels network as prescribed by Regulation 16 of the Adoption Regulations 2005 (Legislative Supplement No. 21) deliberated on this matter in a meeting on 28<sup>th</sup> May 2014. The committee was satisfied that the child in this matter, D S is available for adoption and further that the adoption would be in the child's best interest. A certificate to declare the child free for adoption Number **[particulars withheld]** is attached pursuant to section 156(1). Report to

declare the child free for adoption was filed on 4<sup>th</sup> December 2014.

4. The Applicant has fulfilled all legal requirements relating to the adoption of the child as prescribed in the children's Act 2001. The Director of Children's Services also filed a report as did the guardian ad litem, **N M M** filed on 19<sup>th</sup> February 2015. Both reports were favourable and recommended the adoption of the child by the applicants.
5. The Adoption Society, guardian ad litem and the Director of Children's Services have all established that the applicant is financially and emotionally capable to provide for the up keep and education of the child. I have noted that this is a case of a female applicant seeking to adopt a male child. Under section 158(2) (b) of the Children Act an adoption should not be made of a male child by a female applicant, unless there exist special circumstances that justify the making of an adoption order. The National Adoption Committee on 13th January 2010, by a letter of that date, 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 being adopted by the applicant,
  - v. The applicant is the only person available to adopt the child, and
  - 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.
6. The applicant in this cause is not related to the child; neither does the child have special needs but this is a second adoption by the applicant having previously adopted a girl as evidence by Adoption Cause no 150 of 2010. I believe this is a special circumstance that favors this adoption. I am satisfied that the sole female applicant is not disqualified from adopting a male child in the circumstances. After a careful assessment of the reports filed herein, this court has formed the opinion that it would be in the best interest of the child to be adopted by the Applicant. The application is therefore allowed.
7. The Applicant **L A M** is hereby allowed to adopt baby D S. He shall henceforth be known as **D E G. F M O** (applicant's mother) shall be the legal Guardian of the child should misfortune befall the applicant. I direct the Registrar General to enter this order in the adoption register. The child was born in Kenya and is therefore a Kenyan by birth and is entitled to all the rights that accrue to Kenyan Citizens under the Kenya Constitution 2010 and the Kenya citizenship and immigration Act. I hereby discharge the Guardian ad litem. It is so ordered.

**Dated signed and delivered this 27<sup>th</sup> Day of March 2015.**

**R. E. OUGO**

**JUDGE**

In the presence of:

.....**Applicant**

.....**Court Clerk**