

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MILIMANI

ADOPTION CAUSE NO. 159 OF 2014 (OS)

AND

IN THE MATTER OF THE CHILDREN'S ACT

(NO. 8 OF 2001)

AND

IN THE MATTER OF BABY E I

JUDGEMENT

1. The applicant, E N N, is of Kenyan nationality. By her Originating Summons dated 3rd June 2014, she seeks to adopt a male child known for the purposes of these proceedings as Baby E I alias A E I alias A E alias I I.
2. The subject child, Baby E I alias A E I alias A E alias I I, was found abandoned in the Dandora area of Nairobi by an unknown woman. The matter of the abandonment was reported at the Buru Buru Police Station on 24th December 2009, where the child was taken by the good Samaritans who had rescued him. He was then estimated to be three months old. He was admitted at the Imani Children's Home for care and protection, where he was later committed by the Nairobi Children's Court. Police records availed in court indicate that efforts to trace the birth mother of the child were unsuccessful. The child was placed with the applicant on 10th November 2013. It is estimated that he was born on 24th September 2009.
3. This adoption is being arranged by the KKPI Adoption Society. The said adoption agency declared the child free for adoption by their certificate of 30th October 2013.
4. To facilitate this adoption, the applicant has been assessed by the KKPI Adoption Society, the guardian *ad litem*, J K M and the Director of Children Services. All three have compiled and filed their reports in court. The report by the Director of Children Services is dated 15th October 2014, while that by the KKPI Adoption Society is undated. The report of the guardian *ad litem* is dated 9th September 2014.
5. All these reports are favourable and recommend the proposed adoption. The applicant has demonstrated that she has the financial capacity and emotional capability and capacity to take care of the child. The child appears to have bonded well with her and she considers her to be her parent.
6. I have noted that this is a case of a sole female applicant seeking to adopt a male child. The provisions of section 158(2)(d) of the Children Act should be brought to bear on the application, in terms of determining whether there are special circumstances that would favour the making of the adoption order sought. The applicant is not related to the child in any way, nor does she have biological children of her own, neither has she adopted any. It has been brought to my attention that the child was placed with the applicant since she was the only person available to adopt the child. The placement happened when the child was four years old, and it would appear that he would not thereafter have been adopted by anyone. I am satisfied that that are grounds under

Section 158(2)(d) upon which I can find that special circumstances exist in this case for grant of the adoption order.

7. In the opinion of this court it would be in the best interests of the child that he is adopted by the applicant. The applicant will be able to provide a home and a family for the child to grow up in and thereafter become a useful member of the family and the society at large. Consequently, the applicant shall assume all parental rights and duties of the biological parents in respect of the adopted child; she shall treat the adopted child as if he was born to her. The applicant has been made aware that once the adoption order is made it shall be final and binding during the lifetime of the child and that the child shall have the right to inherit her property. The applicant cannot give up the child owing to any subsequent unforeseen behaviour or other changes in the child.
8. Consequently, I hereby allow the applicant, E N N, to adopt Baby E I alias A E I alias A E alias I I to be known hereafter as M N. I hereby appoint G W N, the child's legal guardian should misfortune befall the applicant during the child's minority. The child is hereby presumed to be Kenyan by birth as he was abandoned within Kenya. I direct the Registrar-General to enter this adoption order in the adoption register. The guardian *ad litem* is hereby discharged.

DATED, SIGNED and DELIVERED at NAIROBI this 31ST DAY OF JULY, 2015.

W MUSYOKA

JUDGE

In the presence of Mr. Oluoch advocate for the applicant.