

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO 151 OF 2014

IN THE MATTER OF THE CHILDREN ACT

AND

IN THE MATTER OF BABY A

S M O AAPPLICANT

JUDGMENT

By an action brought by way of originating summons, S M O A, hereafter “the Applicant”, seeks to be allowed by this Court to adopt Baby A, hereafter “the child”. The Applicant is single and has never been married. She is currently employed as a meteorologist at [particulars withheld]. She resides at [particulars withheld], Nairobi. She wants to adopt because she cannot get a biological child due to medical reasons, but she would like to be the mother of a child whom she can raise as her own. She has therefore elected to explore the alternative of adoption.

The child who is the subject of these adoption proceedings was found abandoned at [particulars withheld] near Ongata Rongai. She was rescued by a Good Samaritan, one B W, who reported the matter of the abandoned child at Ongata Rongai Police Station and the same was recorded vide OB No. [particulars withheld]. This is confirmed by the initial letter from Ongata Rongai Police dated 13th April 2011. The child was then taken to Ngong Sub-district Hospital for medical attention, and she was later referred to Huruma Children’s Home for care and protection. She was subsequently referred to New Life Home Trust, a children’s home, where she was admitted on 8th December 2011. The Resident Magistrate Children’s Court at Nairobi, in accordance with **Section 119** of the **Children Act**, committed the child to the said children’s home on 27th February 2012 vide **P&C No. 03 of 2012**.

The Applicant received the child from Little Angels Network for the mandatory placement period prior to adoption on 15th November 2013. This was by way of a foster care agreement signed on the same date. The child has had the care and control of the child continuously since 15th November 2013. A letter from Ongata Rongai Police Station dated 15th November 2011 confirms that the child has not been claimed by anyone for more than six months. This is corroborated by a letter from the District Children Officer, Kajiado North dated 1st December 2011. In that regard, under **Section 159(1)(a)** of the **Children Act**, this Court can dispense with the consent of the child’s biological parents to the proposed adoption because the child was abandoned and the identity of her biological parents is unknown. On 7th November 2013, KKPI Adoption Society issued **Certificate Serial No.** [particulars withheld] declaring the child free for adoption pursuant to **Section 156(1)** of the **Children Act**.

The Applicant filed an application for adoption on 1st July 2014 seeking orders from this Court that P R N K be appointed the child’s guardian ad litem, and that the Director of Children’s Services and the guardian ad litem be ordered to investigate the propriety of the Applicant’s fitness to adopt the child and submit a report on the same. On 7th July 2014, this Court issued an order appointing P R N K as the child’s guardian ad litem, and further directing the guardian ad litem and the Director of Children’s Services to file their respective reports in Court within 45 days.

Pursuant to **Section 156(1)** of the **Children Act**, before this matter was heard, KKPI Adoption Society of Kenya prepared and filed in Court a report regarding the proposed adoption of the child by the Applicant.

It was concluded in that report that the Applicant is suitable to adopt the child. On 16th June 2015, Little Angels Network filed in court a letter clarifying that the child was declared free for adoption by KKPI Adoption Society but was placed for adoption by Little Angels Network, with the latter relying on the documents of the former Adoption Agency. Another report concerning the proposed adoption of the child by the Applicant was prepared by the Director of Children's Services, and it supports the proposed adoption. The guardian ad litem, P R N K, also filed the statutory report made under **Section 160(2)** of the **Children Act** in which she concluded that the proposed adoption of the would be in the best interests of the child.

All the statutory reports that have been filed in respect of the proposed adoption of the child by the Applicant have recommended that this Court should allow it. This Court has evaluated the facts of this proposed adoption. Considering that the instant case entails a local adoption, it is evident that the Applicant has complied with all the legal requirements for the adoption of the child. The consent of the child's biological parents was dispensed with since the child was abandoned at birth, her biological parents or family could not be traced to give their consent and the child has remained unclaimed for more than six (6) months.

The home visits by the guardian ad litem, the Adoption Society and the Director of the Children Services established that the Applicant is a loving parent who is both emotionally and physically fit to take care of the child and raise her as her own. The unanimous finding of all the statutory reports filed before this Court is that the Applicant has the financial capability to provide for the of the child's well-being. It was also reported that the Applicant enjoys the support of her siblings who will provide an extended family for the child and participate in her growth and development. This Court observed the Applicant with the child in court and it was evident that the child has bonded well with her and considers the Applicant to be her parent.

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, S M O A, is hereby allowed to adopt Baby A. The child shall henceforth be known as A A A. Her date of birth shall be 13th April 2011 and her place of birth shall be Nairobi, Kenya. She is therefore presumed to be a Kenyan citizen by birth. L A, the Applicant's sister, shall be the child's legal guardian if such eventuality arises. 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 28TH DAY JULY OF 2015

M. MUIGAI

JUDGE

In the absence of:

Parties and Counsel.