

REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Adoption Cause 219 of 2011

IN THE MATTER OF THE CHILDREN ACT, 2001

AND

IN THE MATTER OF BABY J.M alias J.A.N – MINOR

E.W.K..... APPLICANT

J U D G M E N T

The applicant, E.W.K is a sole female applicant. She is employed as an Administrator with a security firm. The Applicant has never been married. She wishes to adopt a child because she is unable to have one due to biological reasons. The child, Baby J.M alias J.A.N was presumed to have been born on 13th June 2004. He was found abandoned at (Name withheld) Township. A report was made to (Name withheld) Police Station. The child was admitted at Nairobi Children’s Home for care and protection. The child was committed to the care of (Name withheld) Babies Care Centre by the Nairobi Children’s Court on 18th October 2006 for a period of three (3) years. The period was renewed for another three (3) years on 22nd February 2010. The child was placed under the custody of the applicant for mandatory bonding prior to adoption on 13th May 2011. This was after the Applicant had signed a foster care agreement. Since then, the child has been under the care and custody of the applicant. The child was declared free for adoption by Little KKPI, an Adoption Society, on 23rd February 2011.

Prior to the hearing of the adoption, KKPI, an adoption society prepared a report which is filed in court. The Director of Children’s Services prepared a report which is on record. The guardian ad litem, TWM, prepared a report which has been filed in court. All the reports are favourable and recommend that the court allows the applicant to adopt the child. I have evaluated the facts of this adoption. 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 fulfill 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, it was clear from the reports filed in court that the child had remained in the children's home for a period of five (5) years without any one coming forward to adopt him. This court takes judicial notice of the fact that it is often single female applicants who are willing to adopt children. This situation makes it difficult for abandoned male children to be adopted other than by married applicants. The experience of this court is such that even married applicants prefer to adopt female children. It is therefore clear that the Applicant's offer to adopt the child in this case falls under the special circumstance that the Applicant is the only person who is available to adopt the child.

It is evident that the applicant has fulfilled all the legal requirements relating to the adoption of the child. The consent of the biological parents of the child was dispensed with since the child was abandoned. They cannot be traced to give their consent. This court is satisfied 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 capability to provide for the upkeep and education of the child. This court observed that the applicant with the child in court. It was evident that in the period that the applicant has had the

custody of the child, the child has bonded well with them. The child considers the applicant his parents.

This court formed the opinion that it would be in the best interest of the child to be adopted by the applicant. I allow the application for adoption. The applicant, E.W.K, is hereby allowed to adopt Baby J.M alias J.A.N. He shall henceforth be known as J.A.N. J.M.K, the brother of the applicant, shall be the legal guardian of the applicant should such eventuality arise. I direct the Registrar General to enter this order in the adoption register. I hereby discharge the guardian ad litem. It is so ordered.

DATED AT NAIROBI THIS 19th DAY OF APRIL, 2013

L. KIMARU

JUDGE