

REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Adoption Cause 32A of 2012

IN THE MATTER OF THE CHILDREN ACT, 2001

AND

IN THE MATTER OF BABY A.N alias A.W

J.W.W.....

APPLICANT

J U D G M E N T

The applicant, J.W.W is a sole female applicant. She is self-employed. She was married to one R.M under customary law in 2001 but they got separated in 2008. According to the applicant, during their cohabitation, they were blessed with two (2) children who however died in infancy. Because of this, the applicant has opted to adopt a child. The child, Baby A.N alias A.W was born on 20th February 2008 at (Particulars withheld) Hospital of one J.N.S. The mother absconded from hospital abandoning the child on the same day. The incident was reported to (Particulars withheld) Police Post on 30th December 2008. The child was placed with (Particulars withheld) Home Trust on 5th February 2009. The child was committed to the care of (Particulars withheld) Home Trust, Nairobi by the Nairobi Children’s Court. The child was placed under the custody of the applicant for mandatory bonding prior to adoption on 25th August 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 KKPI, an Adoption Society, on 30th April 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, N.W.K, 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 circumstances under which the applicant wishes to adopt the child are somewhat unusual. The applicant is separated from her husband. She has not been legally divorced from her husband. From the report by the Director of Children Services, it is apparent that the applicant and her husband are still relating to each other. The applicant is however adamant that she cannot procure the consent of her husband to enable her adopt the child. This is a mandatory requirement. The applicant cannot not wish away this requirement. The only way that the consent of the husband can be dispensed with is if the applicant is legally separated or divorced from her husband. Further, under **Section 158(2)** of the **Children Act**, a sole female applicant may not adopt a male child unless the court is satisfied that there are special circumstances that justify the making of such an adoption order. In the present case, this court was not able to discern any special circumstances that can, at the moment, justify the court in the granting of the adoption order.

In the premises therefore, this court will not grant the adoption order craved for by the applicant unless she secures the consent of her husband or in the alternative, avails to this court an order of court confirming her legal separation from her husband. It is only then that this court will be in a position to assess whether or not the applicant fulfills the special circumstances that will enable this court grant her the adoption order that she seeks. It is so ordered.

DATED AT NAIROBI THIS 12th DAY OF APRIL, 2013

L. KIMARU

JUDGE