



**REPUBLIC OF KENYA**

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

**ADOPTION CAUSE NO. 15 OF 2013 (OS)**

**AND**

**IN THE MATTER OF THE CHILDREN'S ACT**

**(NO. 8 OF 2001)**

**AND**

**IN THE MATTER OF BABY A M (minor)**

**RULING**

The applicant, A C J G, is a female sole of Belgian nationality. She has brought an Originating Summons dated 4<sup>th</sup> February 2013 seeking permission to adopt Baby A M. This is a residency adoption.

Baby A M, the subject of these adoption proceedings, was born on 28th August 2000 to D S M and R M M. His birth certificate is number *[particulars withheld]* His mother at one time worked as the applicant's house help, and she and her son lived with the applicant. The mother later abandoned the child and two other children with the applicant. The other two were daughters who were later admitted to boarding school, leaving A M behind with the applicant. The applicant visited the child's mother at *[particulars withheld]* and after discussions she agreed to give up the child for adoption by the applicant. The child was freed on 30<sup>th</sup> May 2012 for adoption by the KKPI Adoption Society who issued a certificate to that effect.

The mother of the child and the child's maternal uncle have consented to the proposed adoption. It would appear however that the consent of the father has not been obtained, yet he is known to be alive and his whereabouts are known. However, there is sufficient evidence that he abandoned the child and the said child was under the sole care of the mother, who has since consented to this adoption.

To facilitate the adoption, the applicant has been assessed by, the KKPI Adoption Society, the guardian *ad litem*, M N G, and the Director of Children's Services. All these agencies have compiled and filed their reports in court. The report of the Director of Children Services is dated 8<sup>th</sup> May 2013 and that of the guardian *ad litem* is 9th May 2013. The report by the KKPI Adoption Society is undated but it was filed in court on 25<sup>th</sup> February 2013. All these reports are favourable and recommend the proposed adoption. The applicants have demonstrated that they have the financial and emotional capability and capacity to take care of the child. The child appears to have bonded well with the applicants and considers them to be his parents.

I take cognisance of the fact applicant is female and she seeks to adopt a male child. **Section 158(2) (b)** of the Children Act bars the adoption of a male child by a single female. But the law allows a window for

such child being adopted by a single female. This would be in cases where there exist special circumstances that justify such an adoption. The Children Ct has not defined special circumstances, by the Adoption Committee established under **Section 155** of the Children Act has come up with guidelines which define what the special circumstances entail.

On 13<sup>th</sup> January 2010 the Adoption Committee formulated guidelines where special circumstances may be found for sole applicants for the purposes of **Section 158(2)**.

The special circumstances to be considered for sole female applicant adopting a male child are:

1. Whether the child is a relative,
2. Whether the child has special needs and the applicant is willing and has capacity to take care of the child,
3. Whether the applicant has adopted or has another biological child or children over whom she is willingly exercising parental responsibility,
4. Whether the child to be adopted has a sibling who is also being adopted by the applicant,
5. Whether the applicant is the only person available to adopt the child, and
6. Whether 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.

I note that the applicant is not related to the child; neither does the child have special needs. I also note that the applicant does not have other children and has not previously adopted other children. The applicant has had custody of the subject child since 2002.

In the opinion of this court it would be in the interests of the child that the child 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 be a useful member of the family. Consequently, the applicant shall assume all parental rights and duties of the biological parents in respect of the adopted child; they 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 their property. The applicant cannot give up the child owing to any subsequent unforeseen behaviour or other changes in the child.

I am satisfied that all the legal requirements have been met. The court allows the applicants' application to adopt the child. The applicant, A C J G, is hereby allowed to adopt the child, Baby A M, who shall be hereafter known as A G. B G is hereby appointed the legal guardian of the child should misfortune befall the applicants. The Registrar-General is directed to enter this adoption order in the adoption register. The guardian *ad litem* is hereby discharged.

**DATED, SIGNED and DELIVERED at NAIROBI this 28th DAY OF JUNE, 2013.**

**W. M. MUSYOKA**

**JUDGE**