



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 42 OF 2013 (OS)

AND

IN THE MATTER OF THE CHILDREN'S ACT

(NO. 8 OF 2001)

AND

IN THE MATTER OF BABY J T (minor)

JUDGEMENT

The applicant, A **B**, is a female sole of Dutch origin. She has brought an Originating Summons dated 1st March 2013 seeking permission to adopt Baby J T (minor).

Baby J T(minor), the subject of these adoption proceedings, is an abandoned male child. He was born at the Kenyatta National Hospital on 1st November 2010 to a woman named D N, who abandoned him at the hospital and a report was made of the matter at the Kenyatta Police Post. Efforts to trace his biological parents thereafter were not fruitful. The Children's Court committed him to the New Life Home Trust, from where he was placed with the applicant on 3rd December 2009. There is sufficient documentation which supports this background prepared by and filed in court on 3rd December 2009 by the KKPI Adoption Society dated 30th May 2012. The KKPI Adoption Society freed the child for adoption by their certificate dated 30th May 2012.

To facilitate the adoption the applicant has been assessed by the Little Angels Network, the guardian *ad litem* appointed by the court, Faith D A Obondo, and the Director of Children Services, who have compiled and filed their reports in court dated 22nd February 2013, 24th April 2013 and 3rd May 2013, respectively. There is also an international adoption home study report by the Ministry of Safety and Justice, Child Welfare Council, Gelderland Region, Arnhem Office, The Netherlands, dated 1st November 2010. 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.

This proposed adoption has been approved by the State Secretary of Security and Justice in accordance with the Dutch law. There is a certificate of consent is dated 9th November 2010. The proposed adoption has received local approval through the National Adoption Committee of Kenya, which has issued a certificate dated 16th May 2012.

The applicant has also identified persons who would step in and act as legal guardians in the event of misfortune, such as death or incapacity, befalling the applicant prior to the child reaching the age of majority. The proposed legal guardians, E B and S B-K, of (withheld), The Netherlands, have executed the requisite letter of consent, which is attached to this Summons, dated 7th October 2011

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 and the wider society. Consequently, the applicant shall assume all parental rights and duties of the biological parent in respect of a 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.

I have noted that this is a case of a female applicant seeking to adopt a male child. Under section 158(2) (b) of the Children Act an adoption should not be made of a male child by a female applicant, unless there exist special circumstances that justify the making of an adoption order. **Section 155** of the Children Act establishes an Adoption Committee whose functions include formulation of policies in matters of adoption. The National Adoption Committee on 13th January 2010, by a letter of that date, formulated guidelines where special circumstances may be found for sole applicants, with respect to **Section 158(2)**.

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

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. The applicant is the only person available to adopt the child, and
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.

The applicant in this cause is not related to the child; neither does the child have special needs. I believe that there are special circumstances that tell in favour of this adoption. I am satisfied that the sole female applicant is not disqualified from adopting a male child in the circumstances, and should be permitted to adopt the male child in this case.

I am satisfied that all the legal requirements have been met. The court allows the applicants' application to adopt the child. The applicant, A B, is hereby allowed to adopt the child, Baby J T(minor), who shall be hereafter known as J T B (minor). E B and S Ba-K are hereby appointed the legal guardians of the child should misfortune befall the applicant. 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 21st DAY OF June, 2013.

W. MUSYOKA

JUDGE