



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

ADOPTION CAUSE NO.63 OF 2010

IN THE MATTER OF THE CHILDREN ACT, 2001

AND

IN THE MATTER OF BABY S.M *alias* ABANDONED

BABY BOY G (MINOR)

S.L. M. S.....APPLICANT

J U D G M E N T

The applicant is a sole female applicant who wishes to adopt baby S.M (the child), a male child. The applicant works as a missionary and a caterer. She has a daughter who is now aged twenty (20) years. Under **Section 158(2)** of the **Children Act**, a sole female applicant shall not be allowed to adopt a male child unless special circumstances are established to justify the proposed adoption. The National Adoption Committee formulated guidelines upon which the court may take into consideration in deciding whether or not to allow a proposed adoption by a sole female applicant in respect of a male child. One of the consideration is whether the child has special needs and the applicant is willing and has capacity to take care of such child. In the present case, the child is of special needs. He suffers from cerebral palsy. He is quadriplegic. In the opinion of this court, the special needs of the child qualifies this court to consider the applicant's application to adopt the child even though she is a sole female applicant seeking to adopt a male child.

The child was presumed to have been born on 25th August 2008. The child was on 26th August 2008 abandoned outside a private house at G area, M Road at Karatina. The child was taken to Karatina District Hospital. A report was made to Karatina police station. The child was admitted to New Life Home Trust, Nyeri on 30th October 2008. The Children's Court at Nyeri committed the custody of the child to the said Children's Home on 19th November 2008. Efforts by the police and other relevant authorities to trace the whereabouts of the biological parents of the child, have been in vain. This court therefore dispenses with the consent of the biological parents of the child. The child was declared free for adoption on 11th November 2009 by Little Angels Network, an adoption society. The applicant took custody of the child on 11th December 2009 for compulsory foster care pending these adoption proceedings.

The applicant was assessed by Little Angels Network, the adoption society and by the Director of Children's Services. The two organizations recommend the application by the applicant to adopt the child. P.M.M, the guardian ad litem, also prepared a report which is favourable and recommend the adoption. This is a local adoption. As stated earlier in this judgment, the applicant is a sole female applicant who expressed her wish to adopt a male child with special needs. The applicant was exhaustively interviewed by the adoption society and by the Director of Children Services with a view to establishing whether she had indeed thought through the responsibility she was taking upon herself in seeking to bring up a child of special needs, especially taking into consideration the financial implication of the decision, in terms of medical costs and the fact that the child shall require to be constantly under the care of a trained adult. Despite these challenges, the applicant is prepared and indeed is determined to adopt the child. This court formed the opinion that the applicant has grown to love the child to an extent that she considers the child to be like her own biological child. She has established that she has the financial and emotional capability and capacity to take care of the child. In the period of more than one (1) year that the child has been in the custody of the applicant, it was evident to the court that the child has bonded with the applicant. All the relevant agencies have recommended the adoption. This court is of the view that the applicants have fulfilled all the legal requirements for a local adoption.

This court formed the opinion that it would be in the best interest of the child for the child to be adopted by the applicant. This court is of the view that the applicant has fulfilled the special requirements under the **Children Act** to enable this court allow her as a sole female applicant to adopt a male child. The applicant will provide a home and a family for the child to grow up. The applicant will be required to execute an undertaking that she shall assume all the parental rights and duties of the biological parents in respect of the adopted child; she shall treat the adopted child as if he was born to her; she has been made aware that once the adoption order is issued, it shall be final and binding during the lifetime of the child that she shall adopt; that the child shall have the right to inherit her property; that an adoption order cannot be recanted, and further, that she shall not give up the child owing to any subsequent unforeseen behaviour, or other changes in the child, or the special needs of the child.

The court will therefore allow the applicant's application to adopt the child. She has fulfilled the legal conditions for local adoption by a sole female applicant. The applicant, Susan Lucy M'mela Shimba is hereby allowed to adopt baby Solomon Maina also known as baby Gatiki. Henceforth, the child shall be known by the name Solomon Kiba Maina. Jackline Nerubucha and David Nerubucha shall be the legal guardians of the child should misfortune befall the applicant. The Registrar General is hereby directed to enter this adoption order in the Adoption Register. The guardian ad litem is hereby discharged. It is so ordered.

DATED AT NAIROBI THIS 18TH DAY OF MARCH, 2011

L. KIMARU

JUDGE