

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

Adoption Cause 64 of 2004

IN THE MATTER OF THE CHILDREN ACT (No. 8 of 2001)

AND

IN THE MATTER OF BABY R. G. P. - INFANT

J U D G M E N T

The Applicant herein namely JSL (*hereinafter called "the Applicant"*) filed an application in this court by way of Originating Summons on 16th March, 2004 seeking inter alia for orders to adopt an Infant child known as Baby RGP (*hereinafter called "the Infant"*).

On 30th July, 2004 Priscilla Muhonja was duly appointed as guardian *ad litem* of the said Infant. When the said application for adoption came for hearing on 10th June, 2005 the said guardian ad litem together with Felista Mwikali an Adoption Officer with Child Welfare Society of Kenya and J.N. Ndung'u (Mrs) an Assistant Director of Children Services under the Children's Department duly presented their respective reports on both the Applicant and the Infant.

The said Infant comes to this court through the said guardian as an abandoned child. She was found abandoned on 9th September, 2001 at N P G H K when after birth on 8th September, 2001 the mother absconded from the maternity ward never to be seen again. The said Infant remained in the said Hospital until 28th September, 2001 when he was committed to the Kisumu Rescue Centre New Life Home Trust on the orders of the District Children's Officer, Kisumu District vide a letter of even date. The said Infant remained at the said Centre until 4th October, 2001 when he was then transferred to the New Life Home Trust in Nairobi and placed from the said Home with the Applicant for foster care on 18th January, 2002. The Infant has remained under the good care of the said Applicant since then. The said District Children's officer has vide a letter dated 11th February, 2003 duly confirmed that since the said date of abandonment, nobody has come forward to claim the said Infant, and that hence the said Infant has remained unclaimed for a period of more than six consecutive months. Care and Protection orders were not obtained because the placement of the said Infant with the Applicant for purposes of foster care and subsequent adoption was undertaken prior to the commencement of the Children Act (**Act No. 8 of 2001**).

The Applicant is unmarried female Kenyan citizen and is a banker by profession, and is currently in the employment of the Kenya Commercial Bank Ltd. as a [*particulars withheld*]. The Applicant comes highly recommended under the said reports, and is financially able to provide for the basic needs of the said Infant. According to the reports filed, the said Applicant is a fit and proper persons capable of adopting and providing due parental care and attention to the said Infant and is by virtue of her profession competent and able to adopt the said Infant. The Applicant has not, out of medical reasons, begotten biological children, but is otherwise both physically and medically fit. The Applicant has according to the said reports successfully previously adopted a daughter known as ECG.

She is thus, according to the said reports desirous of adopting the said Infant with whom she and her daughter have well bonded so as to provide a brother sibling to the said daughter. The said Applicant is further more desirous of having a male lineage and which lineage she cannot establish by reason of the aforesaid medical condition except through adoption. In accordance with the said reports, the Applicant has duly complied with the applicable provisions of the Children Act (**Act No. 8 of 2001**). The said Infant also duly qualifies for adoption having been assessed and declared free for adoption by the Child Welfare Society of Kenya, a registered adoption society as provided under the said Act.

I have considered all the aforesaid reports together with the representations made and the pleadings filed herein. The Applicant is a single parent and being a sole female applicant is, save under special circumstances prohibited under Section 158 (2) of the Children Act (supra) from adopting a male child. The said Act does not define as to what constitutes special circumstances, and the express reading of the aforesaid section clearly rests the discretion on the court to determine such special circumstances as to justify the making of an adoption order. The Applicant has already successfully adopted a female child who has, according to the evidence tendered, bonded intimately with the Infant as a brother for the last three years. The said Infant has also bonded extremely well with the Applicant and her extended family. It is therefore just and reasonable in the circumstances that the Applicant has sought this adoption so that the adopted daughter may have a brother in the emotional and in the legal sense. The said Applicant is further more incapable of having her own natural children on account of medical reasons, and desires most intensely in the spirit of customary dictates to create a male lineage in her nucleus family. The aforesaid reasons in my considered view constitute special circumstances that unequivocally justify the making of an adoption order in respect of this application.

I am thus convinced that the adoption sought by the Applicant shall be in the best interests of the said Infant. In pursuance of the said application and circumstances of this matter, I further dispense with the production of necessary statutory consent as provided under Section 159 9) (a) (i) (c) of the aforesaid Act.

I accordingly order that the said Infant be and is hereby adopted by the said Applicant. I further order that the said Infant be renamed RCL henceforth and direct the Registrar-General to make appropriate entries in the Adopted Children Register accordingly.

DATED, DELIVERED and SIGNED at Nairobi this 8th day of July, 2005.

P. J. KAMAU

JUDGE