



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ADOPTION CAUSE NO. 82 OF 2017(OS)
IN THE MATTER OF THE CHILDREN ACT 2001

AND

IN THE MATTER OF BABY DB (CHILD)

AND

IN THE MATTER OF AN APPLICATION FOR ADOPTION

BY

EK.....APPLICANT

RULING

1. The applicant is a single lady. She filed an application seeking to adopt the minor in question DB. On the 8th March 2018 the application was declined by this Court on the ground that the applicant did not demonstrate any special circumstance to justify the making of an adoption order, considering the restriction placed by **section 158(2)b** of the **Children Act**.

2. The applicant has now filed an application dated 9th August 2018 seeking orders that this Honourable Court be pleased to review its Judgment declining to grant her adoption orders in respect of the minor and instead does grant her an adoption order in respect to the minor. In the alternative, she prays that this Court does order for fresh hearing of the adoption cause.

3. The application is supported by an affidavits sworn by the applicant in which she state as follows:

a) the adoption society had in its report elaborated that they had placed the child with the applicant based on the new guidelines by the National Adoption Committee dated 13th January 2010 that provided the special circumstances when a female applicant would be placed with a male child, one of the circumstances would be where a proposed applicant is the only person available to adopt the child;

b) the child herein was born on 8th April 2013 and was found abandoned at Ivonda 7th April 2015, he was placed in Rehema Pefa Home for two years where no prospective adoptive parents nor his biological parents showed any interest in taking care of the child;

c) that at the age of 4 years the applicant herein was the only person who showed interest in the child as most parents desire to adopt children of tender years;

d) the applicant has since moved to a one bed roomed house and the child sleeps in a separate room and bed unlike before; and

e) that the need for review of the judgment and grant of the orders sought would be in the best interests of the child.

4. I have looked at the affidavit and the documents filed by the applicants in support of their application. The applicant has filed the National Adoption Guidelines for special circumstances. She has further filed a supplementary report of the proposed adoption of the minor by the applicant, where she pointed the honourable court's concerns as stated in paragraph 4 of its judgement as follows;

“.....the evidence on record shows that the applicant is a single lady and runs a bar and butcher business. She lives in a single room in Embakasi and shares her bed with the child. These circumstances are not suitable for the proper growth, development and adoption of the male child by the female applicant.....”

5. Upon perusal of the report, I note that the applicant has moved to [Particulars withheld] Plaza, 1st Floor Door No. 108 in Embakasi into a one bedroom house. The minor no longer shares the bed with the applicant. The position was confirmed by the Adoption Society personnel upon a follow up visit on 29th June 2018.

6. The guidelines issued by the National Adoption Committee (NAC) provide that;

“A sole female Kenyan can be allowed to adopt a male child on the condition that the applicant is the only person available to adopt the child.”

7. I note that the child herein was born on 8th April 2013, and placed under the care of applicant on 21st February 2017 when he was four years. It is clear that the minor had been in the Children’s home for four years until the placement with the applicant.

8. In light of the foregoing and in the best interest of the child the following orders shall issue:

- a) the judgment dated 6th March 2018 declining adoption is reviewed and set aside;
- b) the applicant EK is hereby allowed to adopt the minor DB;
- c) the minor DB shall henceforth be known as DGK;
- d) the child’s date of birth shall be 8th April 2013, and shall be presumed Kenyan by birth having been found abandoned at [Particulars Withheld] village, Kakamega area in Kenya;
- e) the Registrar-General is directed to enter this adoption in the Adopted Children Register; and
- f) the guardian *ad litem* is hereby discharged.

DATED and SIGNED at NAIROBI this 5TH day of FEBRUARY 2019.

A.O. MUCHELULE

JUDGE

DATED and DELIVERED at NAIROBI this 7TH day of FEBRUARY 2019.

ALI-ARONI

JUDGE