



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MILIMANI
ADOPTION CAUSE NO. 130 OF 2014 (OS)
AND
IN THE MATTER OF THE CHILDREN'S ACT
(NO. 8 OF 2001)
AND
IN THE MATTER OF BABY A S

RULING

1. D S M is a single applicant, who is Kenyan citizen. She seeks to adopt a female child, known for the purposes of these proceedings as Baby A S. Her Originating Summons is dated 20th May 2015.
2. Baby A S was found abandoned on 24th April 2011, at Kanyumbani, Maragua, Murang'a County. It was estimated that she was two or so weeks old at the time. She was rescued by a Good Samaritan who made a report of the abandonment at the Maragua Police Station. Efforts by the police to trace the birth mother of the child were not fruitful. The child was subsequently admitted at the Karibu Centre for care and protection, to which institution she was later formally committed by the Nairobi Children's Court. It was estimated that she was born on 12th April 2011.
3. This background is set out in the statement in support of the application as well as the affidavit of the applicant verifying the statement, and in the documents prepared and filed in court by the KKPI Adoption Society on 24th June 2015. The child was freed for adoption by the KKPI Adoption Society by their declaration certificate dated 30th July 2014. She was placed with the applicant for the pre-adoption bonding period on 4th December 2014.
4. To facilitate this adoption, the applicant has been assessed by the KKPI Adoption Society, the Director of Children Services and the guardian *ad litem*, O K N
5. These three have compiled and filed their reports in court. The report by the KKPI Adoption Society is undated but was filed in court on 24th June 2015, while that by the Director of Children Services is dated 24th September 2015. The guardian *ad litem*'s report is dated 13th July 2015.
6. All these reports are favourable and recommend the proposed adoption. The applicant has filed documents that demonstrate that she has the financial and emotional capability and capacity to take care

of the child. The child appears to have bonded well with the applicant and she considers her to be her parent. I have noted that the applicant has one biological child of her own, who has consented to the proposed adoption

7. I have noted from the reports too that the applicant is said to be married to one L L L, who is described as a polygamist, for he has another wife with grown children. The nature of the ceremonies of marriage that the alleged husband went through with the two women has not been documented, and it is therefore not clear whether he had the capacity to contract a marriage with the applicant during the pendency of his marriage to the other woman.

8. At the time the application before me was lodged in court, the said husband was above the age allowed in law for adoption purposes, and it is said that it was on that basis that his name was not included in the application. From the material before me the applicant, the child sought to be adopted, as well as the applicant's biological child live with the said husband.

9. I have noted that the alleged husband has given his consent to the proposed adoption, and so have the applicant's biological child and the applicant's brother. I have noted too that the alleged husband consented to the proposal that he be appointed the legal guardian of the child should anything untoward befall the applicant.

10. Before I make any final orders in respect of the matter before me, I need to be fully satisfied of the marital status of the applicant and the alleged husband in view of what I have stated in paragraph 6 above. This is critical given that the alleged husband is proposed to be the sole legal guardian of the subject child in the event of misfortune visiting the applicant. The alleged husband is of quite a great age *vis-à-vis* that of the child in question.

11. Consequently, I do hereby order that proceedings be undertaken, on a date to be given at the registry, on the aspect of the marital status of the applicant and the said Mr L. It is so ordered.

DATED, SIGNED and DELIVERED at NAIROBI this 7TH DAY OF APRIL, 2016.

W MUSYOKA

JUDGE