



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO 260 OF 2014

IN THE MATTER OF THE CHILDREN ACT

AND

IN THE MATTER OF BABY UNKNOWN BABY GIRL alias E K

A E G EAPPLICANT

JUDGMENT

Before me is an application by A E G E, hereafter “the Applicant”, seeking to be allowed by this Court to adopt Baby Unknown Baby Girl alias E K, hereafter “the child”. The Applicant, a sole female applicant and a citizen of Sweden, is currently employed by *[particulars withheld]* at Nairobi where she works as the *[particulars withheld]*. The Applicant has been a resident in Kenya continuously since 2011. She has therefore made this application as a foreign resident in Kenya proceeding under local provisions of the **Children Act, 2001**. The Applicant’s application has been made under the Rule that allows foreigners who have been living in Kenya for a period of more than three (3) years to adopt a child under local provisions. She is single and has one 5 year-old biological daughter named E. The Applicant wishes to adopt the child in this matter since she would like to expand her family.

The child in this matter is presumed to have been born on 2nd August 2013. The child was abandoned on 24th September 2013 by her biological mother, one G A, in the hands of a Good Samaritan at Olympic area in Kibera, Nairobi. The incident of the abandoned child was reported to Kilimani Police Post on 25th September 2013 as per O.B. No. 20/25/9/2013. Upon the request of the District Children’s Office at Langata, the child was referred to New Life Home Trust for care and protection, where she was admitted on 25th September 2013. The child was committed to the custody of New Life Home Trust by the Resident Magistrate Children’s Court at Nairobi vide P & C No. 417 of 2013 on 13th November 2013. The Applicant was given custody of the child for mandatory foster care pending adoption on 1st August 2014. Since then, the child has been in the continuous custody and care of the Applicant.

The Applicant filed an application for adoption on 5th November 2014 seeking, among others, orders from this Court that M K K be appointed as the child’s guardian ad litem, and that the Director of Children’s Services and the child’s guardian ad litem be ordered to investigate the suitability of the Applicant to adopt the child and submit their respective reports on the same. The Applicant also sought to have the Court appoint R K El O and T O, the Applicant’s sister and brother-in-law respectively, as the child’s legal guardians, and to order that upon adoption the child be known as C H A E. On 20th November 2014, this Court issued an order appointing M K K as the child’s guardian ad litem, and further directing the guardian ad litem and the Director of Children’s Services to file their respective reports in Court.

Prior to the hearing of the adoption, the Adoption Society, Little Angels Network, prepared a report which is filed in court. They also issued a certificate declaring the child free for adoption; the certificate is dated 30th July 2014 and its serial number is 001508. The Director of Children's Services also prepared a report dated 19th December 2014 which is on the Court's record. The guardian ad litem, M K K, prepared a report which has been filed in court. All the statutory reports are favourable and recommend that this Court allows the Applicant to adopt the child.

This Court has carefully evaluated the facts of this adoption. This is an adoption by a foreign resident in Kenya. It is evident that the Applicant has fulfilled all the legal requirements pertaining to the adoption of the child. The consent of the biological parents of the child was dispensed with since the child was abandoned shortly after birth, and the parents cannot be traced to give their consent. The child remained unclaimed for more than six (6) months since being committed to New Life Homes Trust and still remains unclaimed to date. Efforts by both Little Angels Network and Kilimani Police department to trace the child's biological mother have not been successful. This Court therefore makes a finding that the child in this matter is free for adoption and in need of alternative family care.

This Court has satisfied itself that the Applicant is qualified and able to take care of the child. The home visits by the guardian ad litem, the Adoption Society and the Director of the Children Services established that the Applicant is financially and emotionally capable of providing for the upkeep and education of the child. This court observed the Applicant with the child when they attended Court. It was evident that in the period that the Applicant has had the custody of the child, the child has bonded well with her. The child considers the Applicant as her parent.

The applicant explains that she is responsible for *[particulars withheld]* services for *[particulars withheld]* subdivisions. The applicant who has been a resident in Kenya continuously since 2011 says that she plans to stay in Kenya so long as her job allows.

The Applicant, A E G E, is a citizen of Sweden and this has implications for the adoption process. In particular, the question arises as to whether the child will obtain Swedish citizenship if the Applicant moves from Kenya back to her country of origin. The Applicant obtained a letter dated 12th February 2014 from the Embassy of Sweden in Nairobi to clarify this matter. This letter makes clear that should an adoption be completed in Kenya by Swedish nationals, the adoption would automatically be recognized in Sweden, and it also states that the child would automatically acquire Swedish citizenship provided that the child is under the age of twelve years.

Another issue that arises concerning the proposed adoption by a sole foreign female applicant is the provision of **Section 158(2)(d)** of the **Children Act, 2001** which restricts the making by a Court of an adoption order in favor of such an applicant to only instances in which the Court is satisfied that there are special circumstances in support thereof. This Court finds that the respective assessments made in the statutory reports filed by the guardian ad litem, the Adoption Society and the Director of Children's Services indicate that the Applicant has fulfilled most of the legal requirements for adoption under local provisions. On the basis of the these favourable evaluations and the Court's own examination of documentary evidence before it, the Court finds that there are special circumstances, within the meaning of **Section 158(2)(d)** of the **Children Act, 2001**, that commend the adoption of the child by the Applicant. In the first place, the Applicant has been exercising parental responsibility over the child in this matter and the proposed adoption provides a good opportunity to formalize this. The Court is also satisfied that the bonding between the Applicant, her biological daughter and the child in this matter is an important indicator for a well settled family unit. The support of the Applicant's extended family as demonstrated by the willingness of her sister and brother-in-law to become the child's legal guardians is also relevant to convince this Court that there are indeed special circumstances to order in favour of the Applicant's application to adopt the child.

This Court has formed the opinion that it would be in the best interest of the child to be adopted by the Applicant. Accordingly, this Court allows the Applicant's application for adoption. The Applicant, A E G E, is hereby allowed to adopt Baby Unknown Baby Girl alias E K. Henceforth, the child shall be known as C H A E. Her date of birth shall be 2nd August 2013. Her place of birth shall be Nairobi, Kenya. She is

presumed to be a citizen of Kenya by birth. R K E O and T O, the Applicant's sister and brother-in-law respectively, shall be the legal guardians of the child should such eventuality arise. I direct the Registrar General to enter this order in the adoption register. I hereby discharge the guardian ad litem. It is so ordered.

READ AND SIGNED IN OPEN COURT AT NAIROBI THIS 10TH DAY OF MARCH, 2015

M. MUIGAI

JUDGE

IN THE PRESENCE OF ;

Mr. Mame holding brief for Mr. Mwenda for the