



REPUBLIC OF KENYA



KENYA LAW
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**In re Baby RON (Adoption Cause 39 of 2013)
[2014] KEHC 7492 (KLR) (Family) (10 March 2014) (Judgment)**

In Re Baby R O N (Minor) [2014] eKLR

Neutral citation: [2014] KEHC 7492 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

FAMILY

ADOPTION CAUSE 39 OF 2013

LK KIMARU, J

MARCH 10, 2014

IN THE MATTER OF

BMN APPLICANT

Circumstances where a sole female applicant could adopt a male child

The applicant was a sole female applicant and had never been married. She applied to the court to be allowed to adopt a male child. The court in determining the eligibility of the applicant to adopt the child, the court highlighted the circumstances where a sole female applicant could adopt a male child.

Reported by Kakai Toili

***Family Law** - adoption - adoption of a male child by a sole female applicant - what were the circumstances where a male child could be adopted by a sole female applicant - Children Act (cap 141), section 158(2).*

Brief facts

The applicant was a sole female applicant and had never been married. She applied to the court to be allowed to adopt baby (the child) who was a male child. The child was a son of the applicant's maternal aunt.

Issues

What were the circumstances where a sole female applicant could adopt a male child?

Relevant provisions of the Law

Children Act, Cap 141

Section 158 - Adoption applicants

(2) An adoption order shall not be made in favour of the following persons unless the Court is satisfied that there are special circumstances that justify the making of an adoption order—

(a) A sole male applicant in respect of a female child;

(b) a sole female applicant in respect of a male child;

(c) an applicant or joint applicants who has or both have attained the age of sixty-five years;



(d) a sole foreign female applicant.

Held

1. Under section 158(2) of the Children Act, an adoption order could not be issued in favour of a sole female applicant in respect of a male child unless the court was satisfied that there were special circumstances that justified the making of such adoption order.
2. In determining the eligibility of the applicant to adopt the child in the matter, the court was guided by the special circumstances set out by the Adoption Committee as follows:
 - a. When the child was a relative.
 - b. When the child had special needs and the applicant was willing and had capacity to take care of the child.
 - c. Where the applicant had adopted or had another biological child or children over whom she was willingly exercising parental responsibility.
 - d. Where the child to be adopted had a sibling who was also being adopted by the applicant.
 - e. Where the proposed applicant was the only person available to adopt the child.
 - f. Where the applicant was the legal guardian of the child or children appointed by will or in adoption proceedings and the parents died or became permanently incapacitated.
3. The issue of consent was dispensed with since the biological mother was deceased, the biological father was unknown and the applicant had been found to have met the criteria set out by the Adoption Committee.
4. It was in the child's best interest to be adopted by the applicant because she had had custody of him for a while, they had bonded for years and the child considered the applicant his parent.

Application for adoption allowed, guardian ad litem discharged.

Citations

None referred to

Statutes

East Africa

1. Children Act, 2006 (Act No 8 of 2001) sections 155(1); 158(2) - (Interpreted)

Advocate

None mentioned

JUDGMENT

1. The applicant, BMN is a sole female applicant. She is a businesswoman. The Applicant has never been married. The applicant has one biological child from a previous relationship, a daughter born on August 20, 2006. She has applied to this court to be allowed to adopt baby RON (the child). The child was born on July 16, 2003. He is the only son of JKN, the deceased applicant's sister. He was taken in by the applicant in October 2007 after his biological mother died. Since then, the Applicant has had continuous custody of the child. This is therefore an adoption within the family.
2. Prior to the hearing of the adoption, the adoption society, Kenya Children's Home, prepared a report which is filed in court. They also issued a certificate declaring the child free for adoption. The certificate is dated February 16, 2010. The Director of Children's Services prepared a report which is on record. The *guardian ad litem*, PKN, prepared a report which has been filed in court. All the reports are favourable and recommend the proposed adoption. I have evaluated the facts of this adoption. This is a local adoption. The applicant, a single female applicant wishes to adopt a male child. Under section 158(2) of the *Children Act*, an adoption order shall not be issued in favour of a sole female Applicant in respect of a male child unless the Court is satisfied that there are special circumstances that justify



the making of such adoption order. The Adoption Committee established under section 155(1) of the *Children Act* issued guidelines on January 13, 2010 in regard to circumstances that the court will take into account in determining whether the sets of facts put forward by the applicant fulfills the criteria of special circumstances. In the case of a sole female applicant adopting a male child, the following are circumstances which may be considered as special:

1. When the child is a relative.
 2. When the child has special needs and the applicant is willing and has capacity to take care of the child.
 3. Where the applicant has adopted or has another biological child or children over whom she is willingly exercising parental responsibility.
 4. Where the child to be adopted has a sibling who is also being adopted by the applicant.
 5. Proposed applicant is the only person available to adopt the child.
 6. Where the applicant is the legal guardian of the child or children appointed by will or in adoption proceedings and the parents die or become permanently incapacitated.
3. In the present case, the child is a son of the applicant's sister, and therefore the applicant is the child's maternal aunt. The mother of the child is deceased. The applicant also has another biological child over whom she is willingly exercising parental responsibility. This creates special circumstances and on that ground, the adoption is justified and is in the best interests of the child.
4. It is evident that the applicant has fulfilled all the legal requirements relating to the adoption of the child. The consent of the biological parents of the child was dispensed with since the child's biological mother is deceased and his biological father is unknown. This court is satisfied 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 has the financial and emotional capability to provide for the upkeep and education of the child. This court observed that the applicant with the child in 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 his parent.
5. This court formed the opinion that it would be in the best interest of the child to be adopted by the applicant. I allow the application for adoption. The applicant, BMN, is hereby allowed to adopt Baby RON. He shall henceforth be known as RJON CO and KD, brothers of the applicant, 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.

DATED AT NAIROBI THIS 10TH DAY MARCH, 2014

L.KIMARU

JUDGE

