



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MILIMANI

ADOPTION CAUSE NO. 38 OF 2012 (OS)

AND

IN THE MATTER OF THE CHILDREN'S ACT

(NO. 8 OF 2001)

AND

IN THE MATTER OF BABY J B B (minor)

JUDGEMENT

M I L is a single applicant, who is Kenyan citizen. She seeks to adopt a Kenyan female child, known for the purposes of these proceedings as Baby J B B (minor). Her Originating Summons is dated 10th February 2012.

Baby J B B(minor) was abandoned on 17th February 2009 at K M(withheld), Nairobi County, in the house of a Good Samaritan who had housed the mother's child for the night. The matter of the abandonment was reported at the Kilimani Police Station, from where the child was referred to the New Life Home, Nairobi, for care and protection. The children's court later formally committed him to that institution on 24th February 2010. He was placed with the applicant for the mandatory bonding period on 13th August 2011. He was freed by the Little Angels Network adoption society for adoption by their certificate dated 21st April 2010. This background is set out in the statement in support of the application as well as the affidavit of the applicant verifying the statement.

To facilitate this adoption, the applicant has been assessed by the guardian *ad litem*, B.W.O, and the Director of Children Services. These two have compiled and filed their reports in court, dated 30th May 2012 and 8th November 2012, respectively. 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 her and she considers her to be her parent. I have noted that the applicant has previously adopted another child who has been described as thriving under her.

The applicant in this case is sole female and she seeks to adopt a male child. Section 158(2) (b) of the Children Act bars the adoption of a male child by a single female, but the bar is not absolute as the law has opened a window for female applicants to adopt male children. This would be in cases where there exist special circumstances that justify such an adoption. The Children Act has not defined special circumstances, but the Adoption Committee established under Section 155 of the Children Act has come up with guidelines which define what the special circumstances entail.

On 13th January 2010 the Adoption Committee formulated guidelines where special circumstances may be found by the court for the benefit of sole applicants for the purposes of Section 158(2) of the Children Act.

The special circumstances to be considered for a sole female applicant seeking to adopt a male child are:

1. Whether the child is a relative,
2. Whether the child has special needs and the applicant is willing and has capacity to take care of the child,
3. Whether the applicant has adopted or has another biological child or children over whom she is willingly exercising parental responsibility,
4. Whether the child to be adopted has a sibling who is also being adopted by the applicant,
5. Whether the applicant is the only person available to adopt the child, and
6. Whether 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.

The applicant in this case is not related to the child. The child does not seem to have special needs according to the material placed before me. I note however that the applicant has previously adopted another child, who is doing well under her care, and that she is willing to adopt the child the subject of these proceedings.

The Director of Children Services in her report raised questions as to the integrity of the applicant on morality grounds, given that she proposes to adopt a male child. This issue was also raised at the formal hearing. This arose from the fact that the applicant sent a text message to an officer in the Department of Children Services which in the opinion of the officers in that department bordered on immorality. The departments' view is that the applicant's conduct suggested that she did not have the moral rectitude to care and protect a male child.

I have noted from the report of the Director that she is of the opinion that the applicant's case meets the legal requirements. It is also noted in the report that the applicant had previously adopted another child, who has done well under her. Except for the issue emanating from the text incident, it would appear that the Director would approve the proposed adoption. I note that all the other agencies have recommended the adoption. I am tempted to give that applicant the benefit of the doubt. One, because the Director has been satisfied that the applicant has met all the requirements, save for the one incident referred to above. Two, the other reports on the applicant are favourable, and none of them have raised any morality issues on the part of the applicant. Three, the Director questions the morality of the applicant based only on one incident. There is nothing on report which suggests a pattern of such behaviour on the part of the applicant.

In the opinion of this court it would be in the best interests of the child that he is adopted by the applicant. The applicant will be able to provide a home and a family for the child to grow up in and thereafter be a useful member of the family. Consequently, the applicant shall assume all parental rights and duties of the biological parents in respect of the adopted child; she shall treat the adopted child as if he was born to her. The applicant has been made aware that once the adoption order is made it shall be final and binding during the lifetime of the child and that the child shall have the right to inherit her property. The applicant cannot give up the child owing to any subsequent unforeseen behaviour or other changes in the child.

I am satisfied that all the legal requirements have been met. The court allows the applicant's application to adopt the child. The consent of the biological parents of the child is hereby dispensed with. The applicant, M I L, is hereby allowed to adopt the child, Baby J B B (minor). He shall hereafter be known as E T L (minor). J B V is hereby appointed the legal guardian of the child in the event of the untoward happening to the applicant. The Registrar-General is directed to enter this adoption order in the adoption register. The guardian *ad litem* is hereby discharged.

DATED, SIGNED and DELIVERED at NAIROBI this

6TH DAY OF JUNE, 2013.

W MUSYOKA

JUDGE