



**In re DNW (Minor) (Adoption Cause E141 of 2024)
[2024] KEHC 10267 (KLR) (13 August 2024) (Judgment)**

Neutral citation: [2024] KEHC 10267 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
ADOPTION CAUSE E141 OF 2024**

**BM MUSYOKI, J
AUGUST 13, 2024**

IN THE MATTER OF

**DHK 1ST APPLICANT
SWK 2ND APPLICANT**

JUDGMENT

1 The child, the subject of this matter was born to Rosemary Wangeci Njeri on 16-02-2011. Unfortunately, her mother died on 14-11-2022 whereas her biological father has never appeared in her life and he is not known. The birth certificates and other documents of the child do not bear the father’s name. Currently, the child attends Kianjeru Boarding school sponsored by the applicants. The 2nd applicant is one of the maternal relatives who meet the child’s needs while the 1st applicant is her uncle by virtue of marriage to the 2nd applicant.

The applicants who live in United States of America have now come to court with the originating summons dated 1-07-2024. They want to adopt the child and pray for the following orders;

1. They be allowed to adopt the child who is to be named as Denise Njeri Wangeci and the registrar general be directed to enter this adoption into the register of adoptions.
2. Miriam Njeri Njoroge and Miriam Njeri Wambui be appointed the legal guardians of the minor.
3. The child be indicated to have been born in Kenya.

2 Change Trust, an adoption agency carried out an inquiry on and assessment of the child herein and prepared a report dated 28-05-2024. The report shows that the child was orphaned on 14-11-2022 when her mother succumbed to pulmonary pneumonia. She has two older siblings. Since her mother died, the child has been under the care of her grandmother, the applicants and her elder brother one Michael Njoroge.



- 3 The said agency interviewed the child and explained to her the process of adoption and upon assessment, its committee sitting on 28-05-2024 declared the child free for adoption and issued a certificate to that effect serialised as number 00676. The report which was compiled by Lizzie M. Agala and verified by Muteru Njama and the certificate aforesaid were produced in court by Lizzie Mbogo Agala.
- 4 The applicants told the court that they were assessed and approved for this adoption. They testified separately and confirmed that they understood the effect of an adoption order especially that it is irreversible and the child attains the right of their biological children with the right to inherit them. They also exhibited their capability to take care of the child. They adopted their statement and supporting affidavit dated 1-07-2024. They told the court that they have been supporting the child even before her mother passed away and they intended to continue doing so after the adoption. They confirmed that their family had consented to the adoption. Actually, one of their proposed Legal Guardians is their own daughter.
- 5 The applicants and the child were also subjected to evaluation and assessment by the department of children services. Ezekiel Kimani, an Assistant Director of Children services appeared in court and produced a report dated 19-07-2024. This report was prepared after visits, calls and evaluation of the applicants and the child. The report executed by Ezekiel Kimani and Mary Atati is positive and recommends that the adoption orders be granted.
- 6 This court appointed Pamela Mayikuba Shikhule as Guardian Ad Litem of the child. The said guardian appeared in court and confirmed having done assessment by visiting and interviewing the child and also assessing the applicants. She prepared a report of her assessment dated 22-07-2024. She also recommended the adoption as it would be in the best interest of the child.
- 7 This court also heard from the two proposed Legal Guardians, a Miss Miriam Njeri Njoroge and Miriam Njeri Wambui. The former is the grandmother of the child who is currently living with the applicants in the USA. She told the court that she had accepted to be appointed as the Legal Guardian and that she understood the purport of such appointment. She was ready to take care of the child in the event that the applicants were for any reason not capable of discharging their parental responsibilities. She confirmed that she signed consent dated 1-07-2024 voluntarily and that she was ready to take up the role.
- 8 As regards the 2nd proposed Legal Guardian, this court has doubts on the suitability to discharge the role of a Legal Guardian. In my opinion, the age difference between the 2nd Legal Guardian and the child is too narrow. The fact that a Legal Guardian is supposed to step into the shoes of the adopting parent in the event of any misfortune, this court holds opinion that the qualification for a Legal Guardian should be the same as those of the adopting parent. Miriam Njeri Wambui told the court that she was a first cousin to the child and she was in a part time job and that she was 22 years. The child in this matter is 12 years meaning that the age difference is 6 years. Again, she is a daughter to the applicants which means that upon granting of adoption orders, she becomes the child's sibling. She cannot be a sibling and at the same time a technically potential parent. I hold the view that in the event of incapacitation of the applicants, the relationship will have potential of complications or conflicts of roles.
- 9 I also heard the evidence of the child herein. She told the court that she was 13 years and now in school in grade seven. She knew the applicants as her aunt and uncle. She confirmed that she understood the proceedings and she had consented to being adopted by the applicants.
- 10 This is a kinship adoption and should not attract much concerns. The child is well known to the applicants. Her biological parents are not available to give their consent. The applicants have been supporting the child and available to her even during her mother's lifetime. The family members of the



child are agreeable to the adoption. The fact that Miriam Njeri Wambui, a daughter of the applicants had accepted to be appointed as a Legal Guardian attests to the fact that the nuclear family of the applicants is agreeable to the process of adoption.

11 Other than the reservations I have mentioned above on the appointment of Miriam Njeri as a legal guardian, I do not see any difficult in allowing the adoption. The cure for my reservation is to appoint Miriam Njeri Njoroge as the sole legal guardian as that is in law enough. In the circumstances, the originating summons dated 1-07-2024 is allowed in the following terms;

1. David Hubert Kisanga and Susan Wambui Kisanga are allowed and authorised to adopt Denise Njeri Wangeci.
2. The child's name shall, after adoption remain Denise Njeri Wangeci.
3. Miriam Njeri Njoronge is appointed as the Legal Guardian of the minor.
4. The child is declared to be a Kenyan citizen by birth and entitled to all rights, privileges and benefits of a Kenyan Citizen by birth.
4. The Guardian Ad Litem is discharged.
5. The Registrar General is directed to enter this adoption in the register of adoptions.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 13TH DAY OF AUGUST 2024.

B.M. MUSYOKI

JUDGE OF THE HIGH COURT

Judgment delivered in presence of Mr. Odunga holding brief for Miss Ambaka for the applicants.

