



REPUBLIC OF KENYA



KENYA LAW
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**In re MN (Adoption Cause E001 of 2022)
[2022] KEHC 12781 (KLR) (30 August 2022) (Judgment)**

Neutral citation: [2022] KEHC 12781 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
ADOPTION CAUSE E001 OF 2022
PJO OTIENO, J
AUGUST 30, 2022
IN THE MATTER OF ADOPTION OF MI
AND
IN THE MATTER OF THE APPLICATION BY JFS**

JUDGMENT

1. This Cause was initiated by the Originating Summons dated 20.7.2022 which sought orders that:-
 - “(a) The Applicant be authorized to adopt MI, a Kenyan female adult of ID. No. xxxxxxxx.
 - (b) The Court do make an order directing the Registrar General to make an entry in the Adopted Children Registry recording the adoption thereto.
 - (c) The consent of the biological parents be dispensed with since she is now an adult of sound mind and the consent was already given vide Vihiga SRM Guardianship Ad *Litem Cause No. 37 of 2018*.
 - (d) The Court be pleased to issue such further orders as it may deem fit to safeguard the best interest and welfare of MI.”
2. The Summons was supported by the Affidavit of the Applicant which asserted among other facts that she had been a Guardian to the Subject pursuant to the orders dated 9.3.2018 in Vihiga Guardianship Ad *Litem Cause No. 37 of 2018* and that she now wishes to continue assisting the Subject pursue further studies in Canada where there is a requirement that she gets an adoption order to enable her travel with the Subject out of Kenya.
3. When the matter first came to Court in the presence of the Counsel on the 26.7.2022, the Court posed to the Counsel whether an adoption order can issue in respect of an adult. To that question Counsel conceded that under Section 154, of the *Children Act*, Subjects of adoption must be children hence he sought more time to consult the law and submit on that point.



4. When Counsel attended Court the second time, she came armed with the decision in *AHC and NPC, DNC* [2013] eKLR where the Court granted an adoption order on the basis that, the Subject, even if not a child, still needed support of the parents in respect of school fees and upkeep. By that second appearance the Applicant had equally filed an application under Section 26(2) of the Act which sought the extension of parental responsibility over the Subject.
5. Counsel therefore relied on the decisions aforesaid and its reliance and application on Section 28 of the Act and urged that the adoption order issues. She equally cited articles 43 and 45 of *the Constitution* to entrench social and economic rights and urged that these provisions be observed. No submissions were however offered in respect of the application for extension of parental responsibility.
6. The *Children Act* Cap 141 defines a child at Section 2 as any human being under the age of eighteen years. It is also the said Act which provides for and govern the adoption in Kenya. It goes without saying therefore that an adoption order can only issue in respect of a child and not otherwise.
7. In particular, part XII, of the Act providing for adoption orders and vesting jurisdiction upon the High Court to make adoption orders limits that jurisdiction for exercise only upon a child. Section 154 (1) provides:-

“Subject to this Act, the High Court may upon an application made to it in the prescribed form make an order (in this Act referred to as “adoption order”) authorising an applicant to adopt a child.”

On that basis alone, I determine that this Court has no legal powers to make any adoption orders respecting the Subject here. Because the jurisdiction of the Court is limited to making adoption orders only in respect of a child, not adults.

8. But the part additionally create institutions and create prerequisite conditions for an adoption order to be sought and made. One of the Institutions created and whose input is a precondition for the grant of an adoption order is the Adoption Society duly registered and recognized by the Adoption Committee under Section 177 of the Act.
9. The law, Section 156 (1) of the Act, outlaws any arrangement for adoption of a child unless the child has been declared free for adoption by a registered Adoption Society in accordance with the Rules. In this matter there is no report by any Adoption Society declaring the Subject available for adoption so that even if she was a child, these proceedings cannot yield into the order sought in the absence of such a report.
10. In totality, the application flies in the faces of clear provisions of the *Children’s Act* in so far as it purports to seek the adoption of an adult. I find no merit in it and it is thus dismissed.
11. Having so found and the Counsel having cited to Court the decision in *AHC and NPC (Supra)*, I am unable to be persuaded by that decision for I consider that even the preamble to the Children’s Act is clear that it is an Act of Parliament to make provisions for, among other things, adoption of children. It remains my appreciation of the law that it is not permissible or indeed conceivable that an adoption order be made in respect of a person other than a child.
12. No orders is made as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAKAMEGA, THIS 30TH DAY OF AUGUST 2022.

PATRICK J. O. OTIENO



JUDGE

In the presence of:

Ms. Terry Shijenje for the Applicant

Court Assistant: Kulubi

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