



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MACHAKOS**

**ADOPTION CAUSE NO. 26 OF 2018**

**IN THE MATTER OF THE CHILDREN ACT NO. 8 OF 2001**

**AND**

**IN THE MATTER OF MN-MINOR**

**AND**

**IN THE MATTER OF AN APPLICATION FOR ADOPTION BY**

**ENM (APPLICANT)**

**RULING**

1. The adoption order was sought vide two applications. The first application is brought by way of Ex-parte chamber Summons under Section 1A, 1B and 3A of the Civil Procedure Act, Sections 4, 19 and 160(1), (2) and (4) of the Children Act No. 8 of 2001 and all other enabling provisions of the Law. It is dated 27<sup>th</sup> September, 2018. The Applicant **ENM** through her advocates R.M. Mutune and Co Advocates seek the following orders:

1. **THAT** LW holder of identity card number 23\*\*\*\*\* and resident in Mombasa within the republic of Kenya be appointed Guardian ad Litem in this cause.

2. **THAT** the Director of Children's Department, Ministry of Labour and Social Services do investigate the applicants' fitness to adopt or otherwise and file a report in respect thereof.

2. The Second application is brought by way of Ex-parte originating Summons under Section 4, 154, 156(1), 157 (1) (a) and 4(a), 159 (4), (6), (7) and (8)(a), 160 (1), (2) and (4), 162, 163, 164(1) and 170 of the Children Act No 8 of 2001, Section 24 of the Interpretation and General Provisions Act, Chapter 2, Section 9 of the Kenya Citizenship and Immigration Act NO 12 of 2011, the Constitution of Kenya 2010 and all other enabling provisions of the Law. It is dated 27<sup>th</sup> September, 2018. The Applicant **ENM** of Address 8996 92<sup>nd</sup> Street S, Cottage Groove MN-55016 USA through her advocates R.M. Mutune and Co Advocates seeks the following orders

1. **THAT** the Applicant ENMN be authorized to adopt the child currently identified and known as MNM.

2. **THAT** the child be renamed as MNM.

3. **THAT** the child be presumed to be a Kenyan Citizen and as a consequence be entitled to the rights and benefits of a Kenyan Citizen, including being issued with a Kenyan passport whenever desired.

4. **THAT** the Registrar General makes the appropriate entries in the Adopted Children Register

5. **THAT** JMM and WKM be deemed to be the appointed Legal Guardians in respect of the child.

6. **THAT** the court do issue such further orders as are in the interest of justice.

3. In the preliminary stage, the first application was allowed by the court.

4. According to a report filed in court by Kenya Children's Homes, the Applicant **ENM** of ID number 22\*\*\*\*\* is aged 37 years and resides in the United States of America since 2017 where she works as a Nurse with [Particulars Withheld] Healthcare Center. The applicant has

dual citizenship of Kenya and United States of America She has never been married and she met her boyfriend GM on 18<sup>th</sup> November, 2011 and resides with him. The minor has consented to adoption by the applicant vide letter of consent dated 6<sup>th</sup> December 2017.

5. According to the applicant's affidavit dated 27<sup>th</sup> August, 2018, GM is a clinical officer at [Particulars Withheld] Health Services. They have two children, PRK and PNK who are aged 4 years and 1½ years respectively. The applicant avers that she had never been convicted of a criminal offence and attached police clearance dated 10<sup>th</sup> July, 2018. She seeks to adopt the minor who is her niece via birth certificate number 02\*\*\*\*\* and this is a kinship adoption for the mother is deceased as per the death certificate serial number 10\*\*\*\*\*. She averred that the child is studying at [Particulars Withheld] Preparatory in form three. She averred that the whereabouts of her biological father are unknown hence the kinship adoption and that she has not received any form of payment in consideration for the adoption

6. **JMM and WKM** swore an affidavit dated 6<sup>th</sup> September, 2018 to confirm consent to act as Legal Guardians. Further other family members namely **RMM and AMN** vide affidavits dated 6<sup>th</sup> September, 2018 gave consent to the Applicant adopting the minor MN.

7. The minor MN was born on 13<sup>th</sup> October, 2003 in Kiambu to CM (deceased) vide birth entry number 01\*\*\*\*\* and certificate Serial Number 02\*\*\*\*\*. She is daughter to the late sister to the applicant and that the Kenya Children's Homes Adoption Society on 3<sup>rd</sup> October, 2017 allowed her to adopt the minor who has been under the care of her grandfather RMM who is aged.

8. On 15<sup>th</sup> August, 2018, the applicant was found to be a suitable adoptive parent and the minor was declared free for adoption by the Kenya Children's Homes Adoption Society Case committee vide certificate number 1470 issued on the same day.

9. On 4<sup>th</sup> December, 2018, this Court directed the Director of Children Services to conduct investigations as to the suitability of the Applicant to adopt the minor **MN** and submit a report and findings to Court.

10. Emily Kimanzi is the Sub-County Children's Officer, Machakos. She conducted a Social Inquiry on the Applicant by interrogating her on an unknown date and referring to photographs of the applicant's home. It was observed that the applicant has been cohabiting with her boyfriend for seven years and that they have two children namely Precious Nthemba and Preston Reuben. She has the support of their biological children and the family members who live in a three bedroom rental house in Minnesota with the two children. The applicant felt that her siblings are not in a position to take care of MN and thus she is willing to take on the responsibility; her conclusion is that the applicant has demonstrated ability to maintain the minor MN.

11. On 24<sup>th</sup> January, 2019, Emily Kimanzi, the Sub-County Children's Officer, Machakos County filed a favourable report dated 4.1.2019 as to the suitability of the Applicant to adopt the minor MN. Counsel Mbuvi appeared before me on 24.4.2019 to seek that the evidence of Emily Kimanzi in Adoption 25 of 2018 where she recommended applicants' application and sought to have the report dated 4.1.2019 in respect of a home visit that she undertook on 1.12.2018 confirming the suitability of the applicant to be adopted in the instant proceedings and the application was allowed.

12. **On 24.4.2019**, Peter Njuguna Ndotono an adoption program officer at Kenya Children's Homes appeared in court to recommend the applicants' application and to confirm the suitability of the applicants to adopt the minor as well as adopt the report dated 4.12.2018 in his evidence. **JMM, WKM and LWV appeared before me on the said date** to confirm and rely on the contents of their affidavits and willingness to take up their duties as well as recommend the applicant to adopt MN. The applicant also appeared before me on the same date and relied on her affidavits to support the application and indicated willingness to adopt and cater for the needs of the minor.

13. According to the **Guidelines for Alternative Family Care of Children in Kenya page 153**, "kinship adoption is adoption by adopters who are kin or relatives within the extended family of the child." Kenyans living abroad and wishing to adopt a Kenyan child will adopt as Kenyans by way of domestic adoptions. This is therefore considered to be a local adoption.

14. This court is satisfied that the Applicant is a suitable person to adopt the minor MN and that she is financially stable and has the means with which to provide and care for her. I also find that it is in the best interests of the child to allow the application.

For the above reasons, the Court orders as follows;

1. **THAT the Applicant be and is hereby authorized to adopt the minor MN and the baby be known as MNM.**
2. **THAT JMM and WKM be and are hereby appointed Legal Guardians of the minor.**
3. **THAT the Registrar-General do make in the Adopted Children Register an entry recording the adoption in accordance with the particulars set out in the Schedule to this order.**
4. **THAT the Guardian Ad Litem is hereby discharged.**

**Orders accordingly.**

**Dated, Signed and delivered at Machakos this 30<sup>th</sup> day of May, 2019.**

**D.K. KEMEI**

JUDGE