



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MALINDI**

**ADOPTION CAUSE NO. 2 OF 2017**

**IN THE MATTER OF THE CHILDREN'S ACT, 2001**

**and**

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

**S A 1.....THE CHILD**

**BY**

**S A 2.....APPLICANT**

**JUDGEMENT**

1. The story that emerges in this matter can be told in a few paragraphs. The Applicant, S A 2 seeks to adopt the child, S A 1.
2. The Applicant is a sister to the late A F G who was married to U M A. The child is the product of the marriage between A F G and U M A. A F G died in a road accident in 2005. Before passing away he had divorced his wife who married another man and are now blessed with three children.
3. U M A who testified as PW4 told the court that her current husband did not want anything to do with the child and that she has not lived with the child from 2003. Further, that the child had lived with the Applicant all along. She indicated that she was voluntarily giving up her child for adoption by the Applicant and was aware that all her rights over the child would pass to the Applicant once the adoption request is accepted.
4. The child who is aged fifteen years testified as PW2 and told the court that she was consenting to being adopted by the Applicant. She talked of her wonderful relationship with the Applicant stating that the Applicant has taken care of all her needs ever since she started living with her over ten years ago.
5. The Applicant who testified as PW3 told the court that she does not have her own biological child. Her testimony was that when she returned to Kenya in 2007 she took over the responsibility of taking care of her niece from her ageing mother, the grandmother of the child. The Applicant testified that she is in good health and is financially sound and capable of taking care of the needs of the child. She emotionally told the court that the child was her life.
6. The husband of the Applicant, S G A. testified as PW7 and told the court that he gave his blessings to the adoption. His evidence was that he knew the child from the time he met the Applicant ten years ago. Further, that his marriage to the Applicant is not blessed with any child.
7. R T M the *guardian ad litem* testified as PW5 and told the court that she had interacted with the Applicant and the child for over nine years. She vouched for the good relationship between the Applicant and the child.
8. PW1 Ephraim Muteru Njama, the managing trustee of Change Trust, an adoption agency and PW6 Omar Mohamed an Assistant Children Officer stationed at Malindi Department of Children both recommended the adoption. They produced various reports to back up their recommendation.
9. This is an application in which the Applicant seeks to adopt her niece. The two have lived together for over ten years with the Applicant providing all the requirements for the child. The reports by the various actors in such proceedings support the adoption. The core parties (the Applicant and the child) are for the adoption and talk of each other in glowing terms. The biological mother of the child has not lived with the child for a long time. She also supports the adoption and told the court that her husband is not interested in the child.

10. The beautiful human story that emerges from the relationship between the Applicant and the child should receive the sanction of this court in order to make it legally binding. I do so by granting prayers No. 3 and 5 of the originating summons dated 5<sup>th</sup> June, 2017. There will be no order as to costs.

**Dated, signed and delivered in Malindi this 17<sup>th</sup> day of May, 2018.**

**W. KORIR,**

**JUDGE OF THE HIGH COURT**