



**REPUBLIC OF KENYA**

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

**ADOPTION CAUSE NO. 170 OF 2018 (O.S)**

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

**IN THE MATTER OF ADOPTION OF BABY C W**

**BY**

**E K - G AND R W K (APPLICANTS)**

**JUDGMENT**

1. The Applicants E K - G and R W K are in a monogamous marriage. The biological parent (mother) of the minor herein passed away on 30<sup>th</sup> November, 2017 being a single parent. They wish to be granted guardianship of the female child known as C W, through the Originating Summons dated 12<sup>th</sup> November, 2018.
2. Records indicate that the minor in this matter is a grand-daughter to the applicants. Her mother C G K (deceased) was a daughter to the Applicants. There is a Death Certificate No. [Particulars Withheld] dated 13<sup>th</sup> December, 2017 on the record in this regard. The child was born on 25<sup>th</sup> June, 2002 at Kaloleni Hospital, Nairobi.
3. The child, C W, has been living with the Applicants at their residence at Nairobi which she did even during her mother's lifetime. The Applicants have all along been providing for the basic needs of the child including medical care, food, shelter, clothing and education. They have therefore been the minor's primary care givers.
4. The child was in court during the hearing and appeared to have bonded well with the Applicants. She was jovial and clearly seemed to trust the Applicants.
5. Under **section 105** of the **Children Act No. 8 Cap 141 Laws of Kenya** the court may appoint a guardian in the following circumstances:
  - a. **On the application of any individual, where the child's parents are no longer living, or cannot be found and the child has no guardian and no other person having parental responsibility for him;**
  - b. **On the application of any individual, where the child is a displaced child within the meaning of section 119 of this Act.**

Appointment of the Applicants as guardians of the minor means that they shall assume parental responsibility for this child whose biological mother is dead and the biological father is unknown.

6. The orders sought by the Applicants relate to a child. In law, in any matter concerning a child, the best interests of a child are paramount. **Article 53(2)** of the **Constitution** provides the guiding principle on this question as follows:

**“A child's best interests are of paramount importance in every matter concerning the child.”**

The other pertinent law is the **Children Act No. 8 of 2001** and in particular **Section 4(3)** thereof amplifies this principle.

7. I note that the child herein, whose biological mother passed on, is a grandchild to the Applicants. In my opinion, they are best suited to continue taking care of this child, who has been used to them since birth. They have proved during the period prior to the demise of her biological mother that they are capable of taking on the challenge of caring for the child in this matter as indicated in the supporting affidavit.

8. From the foregoing, this court has formed the opinion that it is in the best interest of the child to be placed under the guardianship of the Applicants. Reason wherefore, I allow the prayers sought in the Originating Summons dated 12<sup>th</sup> November, 2018 and orders as follows:

- i. The subject person herein be and is hereby declared to be a minor and requires a guardian.
- ii. The Applicants, E K – G and R W K are hereby authorized to act as guardians of the subject child C W.
- iii. The appointment confers the Applicants as joint guardians of the subject child.

It is so ordered.

**SIGNED, DATED and DELIVERED** in open court this **29<sup>th</sup>** day of **November, 2018**.

.....

**L. A. ACHODE**

**HIGH COURT JUDGE**