



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ADOPTION CAUSE NO 233 OF 2015
IN THE MATTER OF THE CHILDREN ACT, 2001
AND
IN THE MATTER OF CGM

KKK.....APPLICANT

JUDGMENT

KKK (“the Applicant”) seeks by her application filed on 10th September 2015 to be allowed by this Court to adopt CGM (hereafter “the child”). The Applicant works a consultant in the field of publishing. She has never been married. She has however been blessed with two (2) children who are now adults. The child who is the subject of the present adoption proceedings was born on 5th May 2000. She is the daughter of the Applicant’s late brother WMK and his wife FMM. The child’s father passed away on 2nd January 2008. A copy of the death certificate has been annexed to the Applicant’s application. The Applicant assumed responsibility over the child from the time the child’s father passed on. The child’s biological mother has given consent to the proposed adoption citing her inability to take care of the child due to financial constraints. The child’s siblings namely ENM and HKM, who are adults have also given their consent to the proposed adoption by the Applicant. This is therefore an adoption within a family.

Pursuant to **Section 156(1)** of the **Children Act**, before this matter came up for hearing, Little Angels Network, the relevant adoption society, prepared and filed in Court a favourable report in respect of the proposed adoption of the child by the Applicant. They also issued a certificate declaring the child free for adoption. The said freeing certificate is no. 001666 and the same is dated 29th June 2015.

In her application filed on 10th September 2015, the Applicant sought among others, orders from this Court that Dali Mwangi be appointed as the child’s guardian ad litem, and that the Director of Children Services be ordered to investigate the suitability of the Applicant to adopt the child and submit a report. The Applicant also sought to have the Court appoint her relatives, RWM and JIM, as the child’s legal guardians. On 6th November 2015, this Court issued an order appointing DM as the child’s guardian ad litem, and further directed the guardian ad litem and the Director of Children Services to file their respective reports in Court within forty five (45) days. The guardian ad litem, DM, filed his statutory report made under **Section 160(2)** of the **Children Act** on 22nd January 2016 whereby he noted that the proposed adoption of the child by the Applicant would be in the best interests of the child.

By a chamber summons application filed in court on 22nd January 2016 under the provisions of **Section 4** and **161 (2)** of the **Children Act**, the Applicant sought for an order from this court to dispense with the report of the Director of Children Services. According to the Applicant, the Director of Children Services

had failed to interview the Applicant as ordered by this court. The application was served upon the Director of Children Services on 25th February 2016. Despite having been served the Director of Children Services did not file a response to the application. The application was set down for hearing on 4th March 2016. During the hearing, the Applicant was represented by learned counsel Ms. Kiguatha. In her submission on behalf of the Applicant, Ms. Kiguatha submitted that the Applicant possesses dual citizenship of both Kenya and the United States of America. She submitted that under the citizenship and immigration laws of the United States, the child subject of these adoption proceedings will only be able to derive American citizenship from the Applicant if she is adopted before her sixteenth (16th) birthday. According to Ms. Kiguatha, the continued delay by the Director of Children Services to investigate the suitability of the Applicant to adopt the child was likely to delay these adoption proceedings thereby prejudice the child given that she will celebrate her sixteenth (16th) birthday on 5th May 2016. It is for this reason that Ms. Kiguatha urged the court to dispense with the report of the Director of Children Services. On her part, the child expressed her enthusiasm towards her adoption by the Applicant. She stated that she was looking forward to relocating to the United States with the Applicant. The child's biological mother FMM was in Court on 11th March, 2016 and confirmed to Court that she has no objection to the adoption of the child by the Applicant. The child CGM also gave her verbal consent in Court.

This court has given due consideration to the pleadings and the submissions made in court by the Applicant. The applicant seeks an order from this court to dispense with the report of the Director of Children Services. **Article 53 (2) of the Constitution** provides that a child's best interests are of paramount importance in every matter concerning the child. The best interest of the child principle is also emphasized under **Section 4 of the Children Act** which provides as follows:-

“4 (2) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

(3) All judicial and administrative institutions, and all persons acting in the name, shall treat the interests of the child as the first and paramount consideration to the extent that this is consistent with adopting a course of action calculated to-

a) safeguard and promote the rights and welfare of the child;

b) conserve and promote the welfare of the child;

c) secure for the child such guidance and correction as is necessary for the welfare of the child and in the public interest.”

In this case, the court gave an order on 6th November 2015 directing the Director of Children Services to file his report within forty five (45) days. To date, the Director of Children Services has not filed his report. The Applicant has in her application availed a letter from the Director of Immigration Services dated 22nd December 2015 confirming that she holds a dual citizenship. Her application is informed by reason that for the child to automatically acquire citizenship of the Applicant, she ought to have been adoption before her sixteenth (16th) birthday. **Section 38 (2) (g) of the Children Act** provides that the Director shall:-

“Make such inquiries and investigations and may provide such reports as may be required by any court or for the enforcement of any order made by a court under this Act”

The Director of Children Service despite service has not advanced any reasons or circumstances for this Court to consider. The Applicant has been assessed by the adoption society, Little Angels Network and found to be a suitable adoptive parent. The guardian ad litem, DM has also filed his report which is similarly in support of the proposed adoption by the Applicant. Guided by the “best interest of the child” principle both under the **Constitution** and the **Children's Act**, this court is of the view that it would be in the best interests of the child to dispense with the report of the director of Children Services as ordered by

this court on 6th November 2015 in order to allow these adoption proceedings to continue.

All the statutory reports that have been filed in respect of the proposed adoption of the child by the Applicant have recommended that this Court allows the Applicant to adopt the child. This Court has evaluated the facts of this adoption. This is a local adoption. It is evident that the Applicant has fulfilled all the legal requirements relative to the adoption of the child. The consent of the biological mother of the child has been obtained. This Court has satisfied itself that the Applicant is qualified and able to take care of the child. The home visits within the country by the guardian ad litem and the Adoption Society established that the Applicant has the financial and emotional capability to provide for the upkeep and education of the child. This Court observed the Applicant with the child in Court and it was evident that the child considers the Applicant to treat her as her mother would.

On the basis of a careful examination of the documents presented before me as well as the observations made therein, this Court has formed the opinion that it would be in the best interest of the child to be adopted by the Applicant. Hence, this Court allows the Applicant's application. The Applicant, KKK is hereby allowed to adopt CGM. RWM and JIM, the Applicant's relatives shall be the legal guardians of the child should such eventuality arise. This Court directs the Registrar General to duly enter this order in the Adoption Register. The guardian ad litem is hereby discharged. It is so ordered.

READ AND DELIVERED IN OPEN COURT AT NAIROBI THIS 31ST DAY OF MARCH, 2016

MARGARET W. MUIGAI

JUDGE

In the presence of;

Ms Kiguatha for the Applicant.