



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**ADOPTION CAUSE NO. 200 OF 2015**  
**IN THE MATTER OF THE CHILDREN ACT, 2001**  
**AND**  
**IN THE MATTER OF C K N, I M G AND H M N (INFANTS)**  
**AND**  
**I M K .....APPLICANT**

**JUDGMENT**

**INTRODUCTION**

I M K (hereafter ‘the Applicant’) in her Originating Summons Application dated 26<sup>th</sup> August, 2015 seeks the following orders:

- (1) ...
- (2) ...
- (3) *That the Applicant be authorized to adopt C K N, I M G and H M N.*
- (4) *That upon the making of the Adoption Order, the infants be known as C K K, I M K and H M K respectively.*
- (5) *That the Registrar does make the appropriate entries in the Register.*

**THE APPLICANT’S CASE**

In her Written Statement dated 26<sup>th</sup> August, 2015, in support of the Application, the Applicant asserted that she is a businesswoman and a farmer and she was born on 20<sup>th</sup> January, 1960. She stated that she resides in Nairobi and that she is of Kenyan nationality and African race and that she has resided in Kenya since her birth. She also stated that she is a Christian.

According to the Applicant, she is the biological grandmother of the children herein by virtue of being the mother to C N, H M’s mother; and the mother to B G M, who together with E N O, are the biological parents of C K N and I M G. The Applicant further stated that the children have been under her care since

their early childhood and have been continuously receiving financial, material support and parental care from her owing to the fact that her son and daughters have not been financially able to take care of them due to social difficulties.

The Applicant is married to one O A K, a citizen of Germany as shown by the translated copy of marriage certificate produced in Court. He is a banker residing in Germany and he consented to the adoption of the 3 children namely C K N, I M G and H M N who were already in the Applicant's care.

It was her further averment that she has not received or agreed to receive, and no person has made or given or agreed to make or give to her, any payment or reward in consideration of the present adoption and that in any event, she has never made any such previous application for the orders sought herein.

The Applicant further reiterated that she is related to the children and as the adopting parent and their biological grandmother; she has their best interest at heart.

On the hearing date 10<sup>th</sup> October, 2016 the Court interviewed the children to confirm parentage and consents to being adopted by their grandmother and her husband and they were agreeable.

### **DETERMINATION**

The main issue for determination is whether the Applicant has fulfilled the criteria to warrant the grant of the adoption and the orders sought in the present Application. On that basis, **Part XII** of the **Children Act, 2001** prescribes the guidelines and threshold to be met by an Applicant in Applications such as the present one.

Applying the **Children Act, 2001** to the present matter, it will be noted that the children herein are related to the Applicant and therefore this is a kinship's adoption and the sole reason for the proposed adoption is that their parents are unable to raise and cater for their needs owing to social difficulties and the children have since been living with the Applicant. As it stands therefore, the children are in need of alternative care and parental attention in a family environment where their needs can be met.

The Applicant has obtained relevant documents and as required under **Section 158 of Children Act 2001**.

Other relevant documents attached to the Report are;

- 1) Consent by the Applicant's husband O A K as per affidavit filed on 27<sup>th</sup> October, 2016.**
- 2) Consent for the adoption of H M N by her biological mother C N as per affidavit filed on 10<sup>th</sup> October, 2016. The father could not be traced his consent is dispensed with.**
- 3) Consent of B G M son to Applicant and father to C K N and I M G signed consent on 18<sup>th</sup> July, 2016.**
- 4) Consent of E N O wife to son to Applicant B G M and mother of C K and I M G signed consent on 18<sup>th</sup> July, 2016 as per the Little Angels Network Report filed on 22<sup>nd</sup> September, 2016.**

Based on the material before the Court, the Applicant was assessed by the *guardian ad litem*, C W K, and Little Angels Network and was found to be suitable to adopt the children herein. According to the materials availed, the Applicant is financially and socially capable of providing for the children's needs.

The Little Angels Case Committee sitting on 29<sup>th</sup> July, 2016 assessed the Applicants' case and approved that the Applicant do adopt the children herein. Furthermore, the Committee found the Applicant suitable to adopt the said children and issued the respective Certificates declaring the children free for adoption.

I N G, the Applicant's brother, has consented, through his Affidavit sworn on 26<sup>th</sup> August, 2015, to being C K N's legal guardian in the event that anything happens to the Applicant thereby rendering her unable to take care of the child, while L W M, the Applicant's sister, through her Affidavit sworn on 26<sup>th</sup> August, 2015, has consented to being the legal guardian to I M G and H M N, in the event of the death of the Applicant or her inability or incapacity for any reasons that would cause her to be unable to fulfill her roles as parent to the two.

According to the Children's Officer's Report of 3<sup>rd</sup> October, 2016, the Applicant has fulfilled the legal requirements for adoption and has proved capable of taking on parental responsibility over the children in this matter during the period which they have been under her continuous care and control. Further, she is physically and mentally fit and can be entrusted with the children and she is financially capable of bringing up the minor as she has a stable source of income. The Report further indicates that the children have bonded well with the Applicant and the home environment in which they are being raised in is conducive.

In the circumstances, the Court finds that the Applicant has met the criteria of local adoptions and it would be in the children's best interest if they are adopted. The Court also notes that the Applicant is of good moral standing as evidenced by the Certificate of Good Conduct availed herein. The Court therefore holds that the Applicant shall assume the responsibilities of parenthood and the children shall be entitled to inherit from the property of the Applicant and furthermore, they shall not be given up because of any eventualities that might result.

In conclusion, the Court notes that it is in the best interest of the children herein that they be placed under the care and custody of the Applicant as they are going to have a home and a family with a secured future, with their education and wellbeing safeguarded. Additionally, the proposed adoption involves close family relationships where the Applicant is the biological grandmother of the children and as such, there is no doubt that the children are in good hands. Accordingly, the Applicant's husband, O A K, has consented to the present adoption and hence the children will have a family.

### **DISPOSITION**

The Applicant, I M Kis hereby authorized to adopt the children, C K N, I M G and H M N. The children shall henceforth be known as C K K, I M K and H M K respectively. It is also clear from the Court record that the Applicant grandmother to the 3 children is married to German citizen.

I N G, the Applicant's brother, is hereby appointed the legal guardian to C K N in the event that anything happens to the Applicant thereby rendering her unable to take care of the child, while L W M, the Applicant's sister, is hereby appointed the legal guardian to I M G and H M N, in the event of the death of the Applicant or her inability or incapacity for any reasons that would render her unable to fulfill her roles as a parent to the two. If they shall visit/relocate to Germany the Applicant's daughter C N who resides in Germany shall be the guardian of the three (3) children.

It is logical and reasonable that the Applicant and children may visit and/or relocate to Germany. If and when the children and Applicant relocate and/or reside in Germany in the future, this Court shall require compliance with **section 163 2(f) of Children Act 2001** which provides that the Applicant shall provide through the Local Court, Adoption Agency and/or Children Department biannual reports of the said children through Kenyan Embassy to the Director of Children Service for 3 years.

Since the Applicant's husband is based in Germany, the Applicant shall obtain mirror of equivalent adoption orders from Germany for the children's adoption and consequential rights to reside or relocate to Germany.

The Registrar General is hereby directed to enter this order in the Adoption Register. The *guardian ad litem*, C W K, is hereby discharged. It is so ordered.

**DATED, DELIVERED AND SIGNED ON THIS 13<sup>TH</sup> DAY OF DECEMBER, 2016.**

**M. W. MUIGAI**

**JUDGE**

**In the presence of:**

Odhiambo for the Applicant.

**RECTIFIED UNDER SECTION 99 & 100 CIVIL PROCEDURE ACT THIS 26<sup>TH</sup> DAY OF  
JANUARY, 2017.**