



**REPUBLIC OF KENYA**

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

**ADOPTION CASE NO. 17 OF 2014**

A A M.....APPLICANT

**VERSUS**

J O.....CHILD

**JUDGMENT**

1. This application for adoption of a child, **J O** is dated 6<sup>th</sup> June, 2014 and filed on the same date. An affidavit of support to this application is also attached to the application. The applicant for adoption is one A A M. This applicant, PW3, says he is 33 years old, stays at Birongo. He says he is a businessman. He says he has known J for now 15 years. He says he is friendly to J. However, the applicant is unmarried.
2. PW4, the child to be adopted is turning to the age of majority on 4<sup>th</sup> February, 2015- two weeks time. When asked whether he has been at his prospective father's place, he says he has been there only once. He is studying at [Particulars withheld] School in Ruiru, Kiambu County. He is due to sit his KCSE this year. The adopter and the guardians ad litem are uncles to the child, he is their nephew.
3. For the last 16 years, the guardian ad litem have looked after J and have met his physical and educational needs to date. The court's attention is drawn section 157(1) says:

*“Any child who is resident within Kenya may be adopted whether or not the child is a Kenyan citizen, or was or was not born in Kenya:*

*Provide that no application for an adoption order, shall be made in respect of a child unless the child concerned has been in the continuous care and control of the applicant with in the Republic for a period of three consecutive months preceding the filing of the application and both the child and the applicant or applicants as the case may be evaluated and assessed by a registered adoption society in Kenya”.*

To my knowledge this is not the case vis-à-vis this child, he has not been in the continuous care and control of the applicant within the Republic for a period of three consecutive months preceding the filing of the application and both the child and the applicant or applicants as the case may be evaluated and assessed by a registered adoption society in Kenya. The report filed in court on 20<sup>th</sup> August, 2014 is Children's officer's Report, not a registered adoption society.

4. Further attention of the court is also drawn to section 158(1)(a)(b) and (c) which says:

*“ An adoption order may be made upon the application of sole applicant or jointly by two spouses where the applicant or at least one of the joint applicants-*

- a. *Has attained the age of twenty- five years and is at least twenty- one years older than the child but has not attained the age of sixty-five years; or*
  - b. *Is a relative of the child; or*
  - c. *Is the mother or father of the child”.*
5. The present applicant is 16 years older than the child. The applicant is unmarried, the child if anything will relate to father, not as a father but as a brother due to a very narrow age difference.
  6. Third, the applicant’s income as stated in evidence and as appears in the report is at variance. The applicant refers to himself as a farmer or a peasant farmer but in the evidence he says he is a businessman selling agricultural products outside Kisii County.
  7. Fourth, in two weeks’ time the child would be a young person at any rate, no longer a child. Continuation of his education is not confined to his adoption, after all, he has been assisted by his uncles without adoption process. They could continue doing the same, as their gesture is embedded in love, compassion and Christian charitable values. Thus the denial of the adoption cannot, in any way, hinder the continuation of the same.
  8. Thus the court is not satisfied to make an order for adoption in respect of adoption cause No. 17 of 2014 and therefore the application dated 6<sup>th</sup> June, 2014 is hereby dismissed without orders as to costs. The financial assistance could however continue as in the past 16 years by both uncles to the child.
  9. It is so ordered.

Dated and delivered at **KISII** this 30<sup>th</sup> day of January, 2015

**C.B. NAGILLAH,**

**JUDGE.**

**In the presence of:-**

Bigogo holding brief for Kaburi for the applicant.

N/A for the child

Edwin Mongare Court Clerk.