

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO 238 OF 2014

IN THE MATTER OF THE CHILDREN ACT

AND

IN THE MATTER OF M W NY

M W N.....APPLICANT

JUDGEMENT

Before this Court is an application for the adoption by M W N, hereafter “the Applicant”, of M W N, hereafter “the child”. The Applicant, a sole female applicant, is the biological grandmother of the child; that is, she is the mother of S W who is the mother of the child in this matter. The Applicant is a widow and has two other biological children, both of whom are above the age of majority. She is currently employed by the Public Service Commission of Kenya under the Ministry of Foreign Affairs and works as a *[particulars withheld]* in Burundi. She wishes to adopt the child to enable the child to inherit her property without any legal difficulty based on the fact that the child is not her biological child.

The child was born on 8th February 2000 at the Royal London Hospital in the United Kingdom where her mother, S W, was living and studying. The child was subsequently brought back to Kenya by her mother, who was a student at the time and unable to support her, and left in the care of the Applicant. The Applicant has raised the child as her own daughter since she was one (1) year old, and the child has grown up knowing that the Applicant is her mother and the Applicant’s children are her siblings. The child was declared free for adoption by the KKPI Adoption Society, hereafter “the Adoption Society”, by way of the case committee sitting on 27th August 2014 that deliberated on the matter and passed that the child fits into her described age.

The Applicant filed an application for adoption on 15th October 2014 seeking, among others, orders from this Court that: the Applicant be allowed to adopt the child; the Director of Children’s Services be ordered to investigate the Applicant’s suitability to adopt the child and submit a report on the same; B N K be appointed the child’s guardian ad litem for purposes of the adoption proceedings and the child’s legal guardian if any misfortune befalls the Applicant; and the Registrar General be ordered to make appropriate entries in respect of the child. On 14th January 2014, this Court issued an order requiring the Director of Children’s Services to submit the relevant report in Court, requiring the child’s natural mother to write to the court giving her consent to the proposed adoption by the Applicant of the child, and requiring the Applicant and the child to attend Court on 23rd January 2015.

Pursuant to this Court’s order, the letter of consent from the child’s biological mother dated 7th January 2015 was filed in Court on 22nd January 2015. Moreover, the Applicant and the child attended Court on 23rd January 2015. The Applicant came all the way from Burundi while the child was due to begin writing her examinations that following week. The Court took note of the respective commitments of the Applicant and the child, and subsequently dispensed with their further appearance in Court. On 5th February 2015, the Director of Children’s Services filed a favourable report on the suitability of the Applicant to adopt the child and recommend that the Court allows the Applicant to adopt the child.

This Court has carefully evaluated the relevant facts of the Applicant’s application for adoption. The application before the Court is a not only a local adoption but it is also significant that it is a kinship

adoption, where the prospective parent is the biological grandmother of the child. It is evident that the Applicant has fulfilled most of the legal requirements pertaining to the adoption of the child under the provisions of the **Children Act**. The consent of the child's biological mother was duly obtained. The child in the matter has also consented to her adoption by the Applicant in accordance with **Section 158(4)(f)** of the **Children Act**. Moreover, the Director of Children's Services has recommended that the proposed adoption be allowed by this Court. The child has also been duly declared free for adoption by an Adoption Society. Furthermore, the Applicant does not have a criminal record as evidenced by the fact that she obtained a certificate of good conduct from the Central Investigation Department, and the same is No. 763166 and was issued to her on 5th August 2008.

There are two important issues that deserve mention. The first issue was raised in the report of the Director of Children's Services; that is, the fact that the Court did not appoint a guardian ad litem for the child for the purposes of the adoption proceedings as envisaged under **Section 160(1)** of the **Children Act**. The second issue concerns the absence of details of the home visit in the report of the Director of Children's Services. This Court notes that this is a kinship adoption in which the Applicant, the grandmother of the child, has had the custody and care of the child since the child was one (1) year old. In this regard, there is little need for a guardian ad litem for the purposes of the adoption proceedings. The Court also finds that despite the absence of a report on the home visit, this was caused by the fact that the Applicant lives and works outside the country and the child is a boarder at *[particulars withheld]* Academy. Moreover, when the child is on vacation from school, she travels to Burundi alongside the Applicant's children. Notwithstanding the absence of a home visit report, this Court has formed the opinion that the child has bonded so well with the Applicant that she considers the Applicant to be her mother and the Applicant's children to be her siblings.

On the basis of a careful examination of the documents presented before it as well as the observations made therein, this Court has formed the opinion that it would be in the best interests of the child to be adopted by the Applicant. The application for adoption of the child is therefore allowed. The Applicant, M W N, is hereby allowed to adopt the child in the matter, Mi W N. Henceforth, the child shall be recognized as the daughter of the Applicant with all the legal rights and obligations thereto. It is so ordered.

DATED AT NAIROBI THIS 13TH DAY OF MARCH 2015

M. MUIGAI

JUDGE