



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
ADOPTION CAUSE NO.7 OF 2014
IN THE MATTER OF CHILDREN'S ACT NO.8 OF 2001
AND
IN THE MATTER OF ADOPTION REGULATIONS 2005
AND
IN THE MATTER OF ADOPTION OF VKO
AND
IN THE MATTER OF THE APPLICATION FOR ADOPTION BY BNO

RULING

1. The applicant herein BNO filed an originating summons under **Section 154** and **166** of the **Childrens Act No.8 of 2001** seeking:

1. *That this honourable court be pleased to appoint HOG and HMO as guardians Ad Litem for the above named child namely VKO.*
2. *That the Director, Children's Services Investigates the propriety of the applicants' fitness to adopt the child VKO*
3. *That the applicants be authorized to adopt VKO the child.*
4. *That upon adoption the child be known as VKO.*
5. *That costs of this application be in the cause.*

2. The application was supported by affidavits sworn by both the applicant and the proposed couple by the applicant to be *Guardian Ad Litem*. Both affidavits are dated 2nd April 2014. In the applicant's affidavit she avers that she has lived with the child VKO since the demise of the child's mother ENO who was her daughter and that her daughter passed away on 6th July 2002 due to tuberculosis. She further avers that she has lived with the child for more than 6 months prior to the bringing of this application as she is legal guardian of the child. She also states that she is a farmer growing tea and also does dairy farming with an estimated annual income of Kshs.400,000/= . The actual income as per the report of the Kisii County Childrens Co-ordinator is only Kshs.205600/= p.a.

3. The second affidavit is by the proposed *Guardian Ad Litem* herein who are HOG and HMO. They averred that they have lived with the child VKO since the demise of her mother ENO who was their cousin, they have lived with the child for more than 6 months prior to the bringing of this application and

have been husband and wife married under Kisii customary law and have two children aged 10 and 8 years respectively.

4. In concluding their supporting affidavit, the proposed guardians Ad Litem aver that they are business people and farmers with an annual income of about Kshs.300,000/=.

5. Prayers 1 and 2 of the application were granted on 10th April 2014.

6. The report by the Director of Children Services was filed in court on 2nd May 2014. The child in this matter is a grand child to the applicant. The child's mother, EN, died in 2002 when the child was only 5 years old. The child was born out of wedlock to an unknown father and since the death of her mother, she has been under the care, custody and guardianship of the applicant who is also her maternal grandmother. Her late mother was buried at her maiden home. The report also shows that the adoptive child completed her form four in 2013 and scored a grade of C+. She aspires to pursue further education either in the U.S.A. or India.

7. The prospective adoptive mother is a devoted Christian, committed to assisting the vulnerable and she has a passion in giving hope to the less fortunate. She is also law abiding social and like making friends.

8. On the child's educational background, she was enrolled at [Particulars Withheld] up to 2009 where she scored 341 marks in her KCPE, she joined [Particulars Withheld] School where she did her KCSE and obtained a grade of C+.

9. In concluding their report, the Children Officer opined that the child is free for adoption and noted that this is a case of kinship adoption. Furthermore, that the prospective adoptive mother wishes that the prospective adoptive child inherits from her as one of her biological children since she has been the sole care giver to the child.

Section 154 of the **Childrens Act** (the Act) stipulates that the High Court has power to make adoption orders. **Section 160** of the Act on **Guardian Ad Litem** states:-

“1. For the purpose of any application for an adoption order, the court shall upon the application of the applicant or of its own motion, appoint a guardian Ad Litem, for the child pending the hearing and determination of the adoption application.

2. It shall be the duty of the guardian ad litem to -

- a. **safeguard the interests of the child pending the determination of the adoption proceedings;**
- b. **investigate and appraise the court as to circumstances pertinent to the adoption of the child in the prescribed manner;**
- c. **Make recommendations as to the propriety of making any interim orders or an adoption order in respect of the child;**
- d. **Intervene on behalf of the child and arrange for the care of the child in the event of the withdrawal of any consent prescribed by this Act;**
- e. **Undertake such duties as the court may from time to time direct or as may be prescribed by the rules made under this part.**

3. -----

4. The appointment of a guardian ad litem shall expire upon the making of a final order by the court under this Part unless the court, having regard to the interests of the child extends the period of the appointment.

5. -----.”

10. In my humble opinion, it would be in the best interests of the child that she is adopted by the applicant

as the applicant is not a stranger to her but her maternal grandmother. The child herself has accepted to be adopted as a requirement under **Section 158 (4) (f)**. Furthermore, the applicant herself has proved to be not only a grandmother to the child but also a mother since she has been responsible for the child since the demise of her biological mother in 2002. Furthermore, the applicant has demonstrated that she has taken the child to school and judging from her grades, she seems to be bright and she can perform well in her further studies. Consequently, upon adoption, the applicant shall assume all parental rights and duties of the biological parent in respect of the adopted child; she shall treat the adopted child as if she was born to her. The applicant has confirmed this in her affidavit.

11. It is also my humble opinion that by letting the applicant have parental responsibility over the child, the child will be in contact with the rest of her extended family and the child shall have a right to inherit the property of the applicant like other biological children of the applicant.

12. I am satisfied therefore that all the legal requirements for a local adoption have been met and I therefore make the following orders:-

1. *That the applicant herein BNO be and is hereby allowed to adopt the child VKO;*
2. *The names of the child remain as VKO;*
3. *That the Registrar General is directed to enter this adoption order in the adoption register; and*
4. *That the guardian Ad Litem is hereby discharged.*

Orders accordingly.

Dated, signed and delivered at Kisii this 29th day of October, 2014

R.N. SITATI

JUDGE.

In the presence of:-

Mr. Soire for Mr. Onsembe for Applicant

N/A for Respondent

Mr. Bibu - Court Assistant