



IN THE MATTER OF THE CHILDREN ACT (Act. No.8 of 2001)

AND

IN THE MATTER OF AN APPLICATION FOR ADOPTION OF BABY S.W.G

BY

J.M.M

JUDGEMENT

J.M.M, a Single Applicant (**the Applicant**) applied to this court under Section 154(1) & (2) of the Children Act, Cap 141, for authority to adopt the child known as **S.W.G**.

The child was placed with the Applicant for adoption by Little Angels Network. The proposed adoption is a family one as the child is the daughter of the **Applicant's brother**, one **P.G.M** who died on 5.9.2007 of complications due to HIV/AIDS. His wife, one M.M had died of the same cause earlier on 2.7.2000. At the age of 3 years the child was placed in the care of the Applicant by her father, P.G.M, soon after his wife's death. The Applicant was close to her brother, P.G.M, who was intent on remarrying which he did in 2006 when he married one C.M with whom he got a daughter.

The child S.W.G has been tested and found to be HIV positive. She is now in grade 10 at (*particulars withheld*). She is aged 14 years. Section 158(4)(f) of the Children Act requires that if a child proposed to be adopted is aged 14 years or more, the child must give her consent. This, the child has

done. She likes the Applicant whom she knows to be her aunt. She was declared free for adoption by Little Angels Network on 30.6.2010.

The Applicant was born on 8.2.1971 and is now aged 40 years. She is a Kenya Citizen by birth and now resides in Kileleshwa. She had a good upbringing and has siblings. She is a businesswoman. She has never been married. She deliberately got two children, both boys, whose biological fathers are married men. She does not intend to marry. The fathers of her two sons do not know each other. The report by the Director of Children Services did not disclose the names of the Applicant's two sons, nor their ages or whether they have bonded with the child intended to be adopted. The motivation for the adoption is predicated on family ties and the need to make the life of the child and of the Applicant less complicated. The legal implications of adoption have been brought home to the Applicant who knows that the child once adopted will stand in pari pasu with her own biological children in relation to inheritance and parental demands.

The Applicant earns a monthly net income of Shs.500,000/= from her transport and photocopy businesses. She owns a house in Thika and several undeveloped plots. She has a tea farm in Thika measuring 2 ½ acres. Financially, she is capable of raising and educating the child. As she is also a parent to her own biological children, her skills as a parent are not in doubt. Not surprisingly, the applicant's mother who is living and her siblings have all consented to the adoption and given their support. The Applicant has taken in her stride the fact that the child is HIV positive and needs special care.

After perusing the evaluation and assessment reports by the Director of Children's Services and the Little Angels Network, a registered adoption society, and after considering the recommendations made in the reports, including the submissions made by **Mr. T. Njuguna, the learned counsel for the Applicant**, I have come to the conclusion that this being a kinship adoption where the Applicant is the paternal aunt to the child, the application ought be allowed as the provisions of the Children Act Cap 141 have been complied with. I have noted that the Applicant has brought up the child as her own and met the child's financial, emotional and social needs. The Applicant is to be commended for her selflessness and dedication towards the welfare of the child whom she has continued to support since the child was aged three years especially in the light of the medical expenses occasioned by the child's positive status. I cannot but
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application. **I grant the Applicant authority to adopt the child** who is

intent on retaining her name, **S.W.M.** I make the following orders.

1. The Applicant, **J.M.M**, is hereby authorized to adopt the child known as **S.W.G.**
2. The child shall continue be known as **S.W.G.**
3. The consents of the child's biological parents are hereby dispensed with.
4. The date of birth of S.W.G is March 1997 and her place of birth is Pumwani Maternity Hospital, Kenya.
5. The Legal Guardian of the child is **G.W.K** (who shall step into the shoes of the Applicant in the unfortunate event that the Applicant is unable to shoulder parental responsibility).
6. The Registrar General shall make an entry of this Adoption in the **Adopted Children Register** in the prescribed form.
7. For the avoidance of doubt, it is hereby declared that all rights, duties, obligations and liabilities of the biological parents or guardians of the child are extinguished and all such rights, duties, obligations and liabilities shall vest in and be exercised by and enforceable against the adopting parent namely, **J.M.M** as if the said child were her biological child and the child shall have the right to inherit the Applicant.

Dated at Milimani Law Courts, Nairobi, this 24th day of May 2012.

G.B.M. KARIUKI, SC
JUDGE

COUNSEL APPEARING

Mr T. Njuguna advocate, of Waigutu Njuguna & Co. Advocates for the Applicant

Mr. Kugwa – Court Clerk