



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**ADOPTION CASE NO. 5 OF 2010**

**IN THE MATTER OF ADOPTION OF BABY D.....(CHILD)**

**AND**

**R.W.N.....APPLICANT**

**RULING**

This ruling is the result of two applications. The first is the summons dated 12<sup>th</sup> May 2010, in which J.W.T, has applied to be appointed as a guardian *ad litem* in respect of the adoption of the child known as D (D alias R.M.K.) alias R.M.K. The Summons is made pursuant to the provisions of *Section 160* of the Children Act. It would appear such an application must be made before the hearing of the application for adoption. The application before me is contemporaneously filed with that of adoption. In my view, there is no harm because the court has the discretion to first consider the application for the appointment of guardian *ad litem* before that of adoption within the same file which I will do so in this matter. In her affidavit filed in support of the summons (R.W.N.) has averred that the subject matter of the adoption was received into her care and possession on 18<sup>th</sup> August 2009 and has since then been in her continuous care and possession. She beseeched this Court to issue an order to appoint J.W.T as guardian *ad litem*. J.W.T has filed a consent agreeing to act as guardian *ad litem* for the baby. M.W.M filed an affidavit she swore in support of the application for J.W.T to be appointed as guardian *ad litem*. It is stated that she is fit to act as such since she is somebody responsible and respected in the society. J.W.T, also swore an affidavit in support of her application. She deponed that her role as guardian *ad litem* has been fully explained to her and that she is aware of what is expected of her. The role of guardian *ad litem* is stated under *Section 160(2)* of the Children Act. Those roles include *interalia*, First, to safeguard the interest of the child pending the determination of the adoption. Secondly, to investigate and appraise the court of the circumstances pertinent to the adoption of the child. Thirdly, to make recommendations as to the propriety of the making of any interim orders or adoption in respect of the child. Fourthly, to intervene on behalf of the child in the even of the withdrawal of any consent prescribed by the Children Act. Fifthly, undertake duties to be prescribed by the court from time to time direct or as may be prescribed by the rules. I have carefully considered the merits of the application and I am convinced that the applicant i.e. J.W.T, understands her role as a guardian *ad litem*. I issue the order appointing her as such.

Having determined the first application, let me now turn my attention to the second application, which is actually the substantive matter before this court, i.e. the Originating Summons dated 12<sup>th</sup> May 2010 in which (R.W.N.), has applied to adopt baby D alias R. M. K . (D. alias R.M.K.). The Originating Summons is accompanied by a statement of fact. Under *Section 154 (2)* of the Children Act all adoption applications shall be heard in chambers and the identity of the child and the applicant be kept confidential. In compliance of the above requirement of law the child shall henceforth be referred to as D alias R.M.K. and the applicant to be referred to as R.W.N. It is deponed in the affidavit of R.W.N. that she was born in 1974 and that R.W.N. is a business woman in Nyeri District. R.W.N. is said to be married to one MKM. R.W.N. and her spouse have no biological children of their own. It is said that R.W.N. has lived with D alias R.M.K. since 28<sup>th</sup> August 2009. I have considered the application by R.W.N. and I think the same has merit save that her Originating Summons does not comply with the provisions of *Section 18 (4) (d)* of the Children Act. The applicant has deponed that she is married to M.K.M. It is a requirement under the aforesaid sub-section that the husband's consent is secured. A fair order in the circumstances of this Summons is to give the Applicant time to obtain and file such a consent before determining the Originating Summons. Consequently I grant R.W.N. 30 days from the date hereof to file the necessary document under *Section 154(4) (d)* of the Children Act. The matter to be mentioned on 25<sup>th</sup> March 2011 for further orders and directions.

***Dated and delivered at Nyeri this 18<sup>th</sup> day of February 2011.***

**J. K. SERGON**

**JUDGE**

In open court in the absence of parties with notice.