

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Adoption Cause 23 of 2008

IN THE MATTER OF ADOPTION OF J M – MINOR

JUDGMENT

The Applicants herein are married couple since 28th December, 1985 under monogamous marriage system.

They are of Kenya in but have settled in USA and have acquired US Citizenship.

The 1st Applicant is employed as a lecturer at [particulars withheld] and so is the 2nd Applicant.

Both are highly educated and cultured persons showing humility despite their background and position held by them.

They have two grown up sons who are attending University. Though I do not have much details on the two sons from the report from Lutheran Social Services, Illinois.

Moreover, the 2nd Applicant is the maternal aunt of the child, the subject of this matter.

The child was born on 11th November, 1991. She lost her both parents within a short span in the year 2004. The child has an elder sister who is now studying at Baraton University . Since the death of their parents, the Applicants have taken them under their fold and looked after them financially and emotionally. Now they have decided that instead of a remote support they intend to take her under their care, custody and control by adopting her, a daughter they do not have.

The Applicants have been found suitable to adopt the child, by the Adoption Committee, as per Section 155 of the Children Act. They have been given a guardianship orders by Kisumu

High Court on 18th September, 2006. This order is operative till the child attains 21 years of age. I may not, however, comment much on the said order except to note the applicants are legal guardians of the child.

Even though the adoption in this matter is within the family, as the law requires, I have to satisfy myself that they have fulfilled the requirements of sections 157(4) (e) and section 162 of the Children Act, 2001.

The Applicants have enclosed:

- 1. Foreign medical certificates confirming they are of sound mind and good health.**
- 2. Successful interview with Department of Children and Family Services, State of Illinois.**
- 3. Detailed Report from Lutheran Social Services of Illinois, which recommends the applicants for the adoption sought for.**
- 4. Letter of 26th April, 2007 from Illinois Department of Children and Family Services approving the adoptive placement of a minor born abroad with the applicants, the adoption finalized in the country of the child's birth (which is Kenya).**

5. Consent from Wilson Ojwang to act as a legal guardian of the child in the unlikely event of death of the Applicants.
6. The clearance of criminal records.
7. Consent of the child for the proposed adoption.
8. The approval for advance processing of orphan petition dated 16th July, 2008.
9. Letters from church and friends showing suitability of the Applicants to adopt the child.

The Child Welfare Society has issued a certificate dated 10th July, 2008 declaring the child free for adoption.

The only hindrance, if that is how it can be described, is that the child was not in continuous care and control for a period of three consecutive months preceding the filing of the application.

However, I do note that the Applicants have been taking care of the child since 2004 and have been appointed as a legal guardian of the child since 18th September, 2006.

Moreover, both the reports from the Director of Children Services and Adoption Society, with one voice recommend that the proposed Adoption is in the best interest of the child who is a family orphan. As section 4(2) of the Children Act, 2001 exerts that in all undertaking by the Courts of Law (inter alia), the best interest of the child shall be a primary consideration and I intend to do nothing else or less than that.

I have given careful consideration to the facts and circumstances of this case, the reports of all concerned as well as the response by the Applicants to the court questions.

I can only say that I cannot have any hesitation to grant the orders of adoption of the child to the Applicants whom I have found to be suitable to take care of the welfare of the child. I wish that the child have ideal future ahead of her.

I thus grant the order prayed for and allow the applicants to adopt Jane Matere who shall henceforth be known as Jane Matere Wasonga. Her birth date shall be recorded as 11th November, 1991.

I also appoint Mr. WO of 1111 Lakewood circle, Naperville Ill 60540 as the legal guardian of JMW.

I shall also direct Lutheran Social Services of Illinois to provide post adoption supervision and education for a period of two years from the date hereof and direct the Director of Children Services to liaise with the said institute to facilitate the said supervision. The above orders be recorded in the Adoption Register.

I discharge the guardian ad litem I may only point out that the case of Adoption Cause 9/05 cited by the learned counsel has no relevance to the facts of this cause.

Dated and signed at Nairobi, this 24th day of July, 2008

K.H. RAWAL

JUDGE