

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
ADOPTION CAUSE NO. 95 OF 2001 (O.S.)

IN THE MATTER OF ADOPTION OF VMK (INFANT)

R U L I N G

The applicants herein prayed the court for an order authorizing them to adopt the infant, after the court has appointed a guardian ad litem, who had in fact been appointed before the matter came to me for hearing.

During the hearing of the application for adoption, the infant's father MN addressed the court stating that he had come to court to give up his daughter M for adoption by his elder daughter E who lives together with her husband in Maputo Mozambique. The infant's mother did not come to court because she is sickly, but the 2 parents have discussed the matter and agreed to the adoption of M by Eunice, who has been living with her since 1999 whilst she goes to school in Maputo.

From the submissions by the natural father giving consent for the adoption of Mwendi, I accepted the consent, and considered it as consent from both parents of M having accepted.

Apart from the affidavit sworn by both applicants to the adoption, I nevertheless asked each of them questions about their personal lives and the infant.

The two applicants, Dr. Peter Earle John Coughlin and EMK 8. They have no children of their own but they hope to have in future.

The infant has been living with them in Maputo whilst attending school. The 1st applicant has a daughter from a previous marriage, but she does not live with them in Maputo. He disclosed that his wife the second applicant was pregnant with twins, but she had a miscarriage.

He testified further that the infant came to their possession in 1998, about 2½ years ago, and now they constitute a family. She has become an integral part of their family. They travel with her, and also guide her morally, and they have great emotional affection towards her. The applicants assured court that the infant would continue to be their daughter even if they have children of their own. The 1st applicant has sufficient income, which would enable him to look after the infant throughout her life.

The second applicant is the blood sister of the infant. She said their parents are now old. Their father is also retired from work, and previously, it was E herself and her father who both had the responsibility to look after the infant M. E assured the court that she would see to it that her sister M is supported to complete her education and eventually get married and settle down. She does not intend to make her a maid, but to look after her.

The children's officer, Mrs. Adelaide Ngaru prepared a comprehensive report in this case. I considered it and accepted it, which means that I accepted her recommendation to allow the applicants to adopt the infant.

The infant M was quite excited to be living and going to school in Maputo. I was not quite sure that she understood the full meaning of "adoption", but she muddled vaguely that they would adopt her in order to look after her.

The 1st applicant is of a different race from the infant. He is an American citizen. The 2nd applicant is a Kenyan national and a sister to the infant. Miss Omamo urged the court to sanction the adoption, though because an exceptional circumstance exists – i.e the marriage of the 1st applicant to the 2nd applicant

who has blood relationship with the infant. Besides, the applicant's natural parents have given consent, Miss Omamo submitted further that the proposed adoption will only crystallize an already pre-existing relationship and the applicant has been in the custody of the applicant for 2½ years.

From the very elaborate submissions as well as the evidence of the interview I had with the parties in court, I was satisfied that the infant and the applicants have become a family. The added factor that the infant is a blood sister of the 2nd applicant makes the court come to the conclusion that there are exceptional circumstances which would make the court make an order in favour of the applicant who is of a different race from the infant.

The parents of the infant, who are also parents of the 2nd applicant, have given consent.

Taking all these facts into consideration, I find that there are exceptional circumstances, which would justify the adoption of the infant by the two applicants. I proceed to authorize the 2 applicants to adopt the infant who should from now on be known as VMK.

Dated at Nairobi this 4th day of October, 2001.

JOYCE ALUOCH

PUISNE JUDGE