



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

MISCELLANEOUS CIVIL CASE NO. E016 OF 2021

IN THE MATTER OF THE APPLICATION FOR NEXT OF KIN

AND/OR GUARDIANSHIP BY G.M.M. & J.W.M.

1. GMM

2. JWM.....APPLICANTS

JUDGMENT

1. **GM.** and **JW.** have sought an order for their appointment as next of kin and or guardians to **SMM.**
2. The background of this matter should restore, in any one reading this judgment, faith in the humanity of man.
3. GMM. (the husband) and JW. (the wife) are husband and wife whom I shall refer to as applicants. They are blessed with two sons, one is now 31 years old and the other is 21 years old.
4. On **14th March, 2001** the applicants found an abandoned infant baby girl at Majengo area near Thika Primary School. The applicants took the infant SMM to **Thika Level 5 hospital** and there after reported the matter to **Thika Police station** and to the Children's Officer in Thika. Both those offices advised the applicants to take care of SMM as the matter was being investigated. SMM, as she told me on interviewing her, is now 20 years old. She has lived with the family of the applicants ever since. She refers to them as mother and father. The applicants stated in their affidavit that they lived and took care of SMM and no one claimed her since then. SMM became part of their family. SMM. in her affidavit stated:-

§ JWM and GMM. are known to me as my parents as they have raised me as their own since I was a child.

§ That I am aware that they are not my biological parents as they informed me that they rescued me from Majengo area near Thika Primary School where I had been abandoned as a new born.

§ That together with their other biological children namely:- JKM. (31) and LKM (21), have lived and/or stayed with me as a loving family and no other family known (sic) to me."

5. I have before me a letter dated 12th May, 2021 by the **Assistant Chief Umoja sub-location Thika** and from the **sub-county Children's Officer, Thika West and East** dated the same date where the information on the finding of SMM., abandoned as an infant is confirmed.
6. **Section 105** of the **Children's Act** is the Section which provides for the appointment of a guardian and which is appropriate in this case. That Section stipulates as follows:-

"In addition to the prayers of the court to appoint a guardianship under Sub Section (5) of the Section 104, the court may appoint a guardian in the following circumstances:-

a) On the application of any individual where the child's parents are no longer living or cannot be found and the child has no other person having parental responsibility for him.

(b) On the application of any individual, where the child is a displaced child within the meaning of section 119 of this Act."

7. One thing that ought to be noted is that the Children's Act defines a child as one who is under 18 years of age. SMM. is now 20 years.

Does that mean she cannot benefit from the provisions of the Act? I dare say no. She can indeed benefit from the provisions of the Children's Act because in my interview of her, it is clear she is still under the care and protection of the applicants and she desires to continue to be so. The Children's Act under **Section 28** recognizes extension of parental responsibility for children who are over the age of 18 years. Further, **Article 27** of the Constitution forbids discrimination on many levels and one of them is, it forbids discrimination on the basis of age.

8. It is clear from the evidence produced before court that the applicant wish to continue being the parents of SMM and therefore seeks to be appointed her guardian/next of kin. SMM knows of no other parents or relatives and is therefore praying that the applicants be appointed her guardian. There is no basis for this Court to refuse to grant the prayers sought.

DISPOSITION

- a) JWM. and GMM are hereby appointed, until further orders of this Court Guardians of SMM.
- b) JWM. and GMM are hereby appointed next of kin of SMM

Orders accordingly.

JUDGMENT, SIGNED DATED AND DELIVERED AT KIAMBU THIS 3RD DAY OF JUNE, 2021.

MARY KASANGO

JUDGE

Coram:

Court Assistant: Ndege

For Petitioner: No appearance

COURT

Judgment delivered virtually.

MARY KASANGO

JUDGE