



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

ADOPTION CAUSE NO. 170 OF 2017

IN THE MATTER OF THE CHILDREN ACT, 2001

AND

IN THE MATTER OF THE ADOPTION OF

CHILD

A N.....MINOR

BY

J N J N.....APPLICANT

JUDGMENT

The Applicant J N J N sought by an Originating Summons and Affidavit in support, orders allowing her to adopt child A N (hereinafter the child) whose name she wants changed to A N N. The Applicant is 73 years old. She is a retired community health nurse. She is single. She has two living and two deceased adult biological children. They are T T (deceased) who was the father to the minor; P Y (deceased), K S N and S M. K S N is 49 years old, single and lives with the applicant managing the family farm. He has filed his consent marked JNN-8. S M is 44 years old, married and lives with her husband in the USA.

The child in this matter was born in Kajiado County on 2nd February 2003. The applicant is the minor's paternal grandmother. The minor's father died on 30th My 2016 while the mother is said to be a Tanzanian nationality who was not able to take care of the child and had freely relinquished the child to the applicant for adoption since 2010. She has since then been in the applicant's continuous custody and care. Change Trust Adoption Society issued a certificate declaring the child free for adoption pursuant to **Section 156(1)** of the **Children Act**. The biological mother of the child M M T a Tanzanian National was present in court on 27th September 2018 and gave consent to kinship adoption of the child by the Applicant paternal grandmother as per her affidavit sworn and filed on 27th September 2018. The said freeing certificate is serial No. [Particulars withheld] and the same is dated 17th August 2017. Change Trust Adoption Society filed their Report on 15th June 2017 and recommended the adoption.

In an application filed on 6th October 2017 the Applicants sought orders that Silole Mpoke be appointed as the child's guardian *ad litem*, and that the Director of Children's Services be ordered to investigate the suitability of the Applicant to adopt the minor and submit a report. On 15th February 2018 this Court issued an order appointing Silole Mpoke as the minor's guardian *ad litem*, and further directing that she and the Director of Children's Services file their respective reports in Court.

S M, the guardian *ad litem* filed a report which favoured the proposed adoption of the child by the Applicants. Another report in respect of the proposed adoption of the child by the Applicants was prepared by the Director of Children's Services and filed on 17th April 2018. This report was similarly in favor of the proposed adoption. Both reports filed in respect of this proposed adoption have recommended that this Court allows the Applicants to adopt the child.

This is a local and kinship adoption. It is evident that the Applicant has fulfilled all the legal requirements relative to the adoption of the child. The biological mother, through consent marked JNN-3, freely released the child to the applicant for adoption. This Court is satisfied that the Applicant is the only available female as well as the actual caregiver of the child since birth and is therefore qualified and able to take care of the child. The home visit by the guardian *ad litem* confirms that the Applicant is indeed capable of providing for the child. The

Report from the Department of the Children's Services established that the Applicant has the financial and emotional capability to provide for the upkeep and education of the child. The child has bonded well with the Applicant according to the Guardian *ad litem's* report. Although the Applicant is over 65 years old not as required by Section 158(1) Children Act 2001, she has been with the child since 2010 to date. She is her paternal grandmother and lives with son K S N and daughter S M is legal guardian. The Applicant is granted the adoption despite the age.

After careful examination of the documents presented, it is the opinion of the court that this Adoption would be in the best interest of the child. Hence, this Court allows the Applicant's application. The Applicant J N J N is hereby allowed to adopt child A N. Henceforth, the child shall be known as A N N. Her date of birth shall be 2nd February 2003. Her place of birth shall be Kajiado County. She is a citizen of Kenya by birth. S M is hereby appointed as the legal guardian of the child should any eventuality arise. This Court directs the Registrar General to duly enter this order in the Adoption Children Register. The guardian *ad litem* is hereby discharged. It is so ordered.

DATED, SIGNED AND DELIVERED THIS 12TH DAY OF NOVEMBER 2018.

M. W. MUIGAI

JUDGE- FAMILY DIVISION HIGH COURT

IN THE PRESENCE OF;

LYNN HOLDING BRIEF FOR MS. KIGUATHA FOR THE APPLICANT

PATRICK KINUTHIA COURT CLERK.