



REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI
MILIMANI
ADOPTION CAUSE 151 OF 2016
IN THE MATTER OF THE CHILDREN'S ACT, 2001
AND
IN THE MATTER OF ADOPTION
OF
J N.....MINOR
BY
DR. D G K.....APPLICANT

JUDGMENT

The Applicant by way of Originating Summons and an Affidavit in Support dated 23rd September 2016 sought Orders *inter-alia* that she be allowed to adopt the Minor herein. She also prayed for Orders that she be retained as the guardian of the Minor, that M M K; her elder sister be appointed Legal Guardian of the Child, that the Director of Children Service do investigate her fitness to adopt the Minor and file a Report and that the Child be known as J N K.

The Applicant is an adult citizen of Kenya aged 49 years as evidenced by the copy of her Identification Card produced before this Court. She is single and without any biological children of her own. She works with [particulars withheld] and is currently posted in Brazzaville-Congo. The Applicant is a Cousin to the Minor. She is her guardian and has been supporting her and the sister since the demise of the Minor's father on 5th February 2011 as evidenced by his certificate of death of serial no. [particulars withheld].

The Minor in this matter JN was born on 20th May 2004 in Meru County as evidenced by her certificate of birth of serial no. [particulars withheld]. She is currently aged 13 years. She is the second born daughter to the late N M M; the Applicant's maternal uncle and J K M. The Minor was abandoned by her mother sometime in 2006 when she was 4 years old following a separation with the husband and had been left in the care of her late father who could not afford her the needed care and protection due his drinking problem. Due to this, the Minor's paternal family agreed to have the Minor taken in for care and protection by her paternal Aunt H M and later on by R G K, the Applicant's mother. Care and custody of the Minor was then given to the Applicant since her mother R G K who initially had her custody was aging and sickly. Accordingly, the Applicant has been having custody of the Minor since August 2015. The family agreed that the Applicant adopts the Minor vide a consent filed on 29th November 2016. The

Matter was reported to the area chief of Kathera Location on 30th April 2015 who agreed with the family's decision and wrote a letter to the Imenti South District Sub-County recommending that guardianship be granted to the Applicant. Guardianship was then given to the Applicant by the Imenti South District Sub-County Children Department as evidenced by a copy of their letter dated 26th August 2015. Since then, the Minor has been in the Applicant's care and custody and she is happy about the adoption arrangements since she considers the Applicant her mother. The Minor was declared free for adoption by the Child Welfare Society of Kenya on 14th September 2016 as shown by the freeing certificate of serial no. 0786.

DETERMINATION

C K M who was appointed to act as the Guardian *ad-litem* on 24th February 2017 filed her Report dated 10th April 2017. In the Report, she stated that she has known the Applicant for over 20 years. She stated that the Applicant is God-fearing, understanding and caring. She also submitted that she has known the Minor J N for over 5 years. She stated that the Minor has been enrolled at [particulars withheld] School, Karen and that she is being well taken care of by the Applicant. She stated that the Applicant has made arrangements with her employer to ensure that she comes to Kenya during school holidays to spend time with the minor and that she also intends to have the minor join her in Brazzaville during such holidays upon completion of the process. Further, she submitted that the Minor has fitted well into the family and has grown to know the Applicant as her only parent and that the two have nurtured a good parent-child relationship. Accordingly, she recommended that the Applicant be allowed to adopt the Minor as that will give her a sense of identity and belonging.

The Child Welfare Society of Kenya also filed their Report dated 16th September 2016. It was submitted that the Applicant is in good health and is of sound mind and thus capable of adopting the Minor. Further, the Report confirmed that the Applicant has no criminal record as evidenced by a copy of her certificate of good conduct of serial no. [particulars withheld]. It was also submitted that the Applicant has nurtured a good parent-child relationship with the Minor and that she recognizes her as her mother. The Report further submitted that the Applicant's extended family has unanimously consented to the proposed adoption. The Applicant was said to be socially, emotionally and financially capable of taking responsibility for the Minor and they thus recommended the adoption.

The Director of Children Services filed their Report dated 7th March 2017 pursuant to a Court Order made on 24th February 2017. In the Report, it was submitted that from their observations, the Minor and her sister had bonded very well with the Applicant and that she had provided a good environment for them. Further, from an interview conducted with the Minor, she stated that the Applicant has been supportive to her and the sister since they were young. She also stated that she is aware of the adoption and its implications and she consents to her being adopted by the Applicant. They stated that the Applicant has met all the legal requirements for a local adoption under the **Children's Act, 2001** and they recommended the adoption as it will be in the best interests of the Minor.

From the foregoing, it is settled that the Applicant has met all the requirements for local adoption under **Section 156(1) of the Children's Act, 2001**. This Court has been satisfied that she is socially, emotionally, physically and financially capable of taking care of the Minor.

Section 158(1) of the Children's Act, 2001 provides:

An adoption order may be made upon the application of a sole applicant or jointly by two spouses where the applicant or at least one of the joint applicants—

(a) has attained the age of twenty-five years and is at least twenty-one years older than the child but has not attained the age of sixty-five years; or

(b) is a relative of the child; or

(c) is the mother or father of the child.

From the facts, this is a Kinship Adoption; as elucidated by the facts above where the Applicant wants to adopt the Minor who is her cousin so as to provide her with care and protection. She has been supporting the Children ever since they were in her mother's custody and is now desirous of legally taking the Minor as her own. Moreover, the Minor and the extended family are aware of this adoption and its implication and they have consented to it without reservation. This is evidenced by their consents filed as required under **Section 158 of the Act**. Pursuant to **section 159(1) of the Act**, this Court hereby dispenses with the consent of the Minor's biological mother as the same cannot be obtained. Accordingly, in this matter, this Court holds that it is in the best interests of the Child for her to be adopted by the Applicant. The Applicant has been assessed and found capable of adopting the Minor in question. This Court hereby orders that:

- I. The Applicant DR. D G K is hereby authorized to adopt J N, the Minor herein. Henceforth, she shall be known as J N K and she shall be presumed a citizen of Kenya by birth, born on 20th May 2004 in Meru County.
- II. M M K, sister to the Applicant is hereby appointed to be the legal guardian of the Minor should any misfortune befall the Applicant.
- III. The Registrar General is hereby ordered to enter this adoption order in the Adoption Register.
- IV. The Guardian *ad-litem* C K M is hereby discharged.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 12TH DAY OF JUNE 2017

M.W. MUIGAI

JUDGE