

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 150 OF 2016

IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001

AND

IN THE MATTER OF W. M. (MINOR)

BY

DR. D G K.....APPLICANT

JUDGMENT

Before this court is an application by the Applicant brought by way of originating summons who seeks orders *inter alia* for the Adoption of W.M (the Minor herein). She also prays for orders that that M M K; her sister be appointed Legal Guardian of the Child, that the Director of Children's Service do investigate her fitness to adopt the Minor and file a Report and that the Child be known as W M K.

The Applicant is an adult aged 49 years which is evidenced by a copy of her identification card of serial no. 243409725. The Applicant resides and works for gain in Nairobi at [particulars withheld] Wellcome Trust Program as a research fellow and is currently posted in Brazzaville-Congo. The Applicant is financially stable and can care for the minor. The Applicant has no biological children of her own. The Applicant is a Cousin to the Minor. The Applicant has been supporting the Minor and her sibling since the demise of their father. The minor's mother was an inhabitant of an informal settlement in Meru town with no traceable family tree and she abandoned the minor at the age of 4 years. All efforts to trace her have been futile. The minor had been under the guardianship of the Applicant's now sick and aged mother since she was abandoned until the month of August, 2015 On 30th April 2015 the Applicant reported to the area chief of Kathera location, who vide a letter dated 30th April 2015 wrote to the Imenti South District sub-county children's department suggesting that the guardianship of the Minor be granted to her. She has not made any previous application for an adoption order in respect of the same child. So far the Applicant has been the guardian of the minor and has taken good care of the minor.

The minor is a female, 15 years of age. She was born on 21st November 2001 at Mgundum Meru County. This is according to the birth certificate of serial [particulars withheld]. She is the first born daughter to the late N M Mi I and J K M'. Her father, M M, who is the Applicants' late uncle, passed away on 5th February, 2011 as evidenced by his certificate of death of serial no. 059417. She has one sibling, J N, who was born on 20th May 2004. According to information availed by the children's paternal family, the child's mother abandoned the children sometime in the year 2006. The family unanimously agreed to have the children taken in for care and protection by their aunts due to problems faced by their father first by H M and later by R G K, mother to the Applicant. The children's father passed away on 5th February 2011. The Minor's mother still remains at large and cannot be traced. In the best interests of the children, the paternal family transferred custody of the children to the Applicant due to the fact that the Applicant's mother and first guardian is not only of old age but is also sickly.

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 custody of the Minor because she is 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. [....] .

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, that she has been enrolled at [particulars withheld] School, Karen and that she is being well taken of by the Applicant. She has made arrangements with her employer to ensure that she comes to Kenya during school holidays to spend time with the minor. She also intends to have the minor join her in Brazaville 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. According to this report, they submitted that the Applicant has nurtured a good parent-child relationship with the minor and has taken good care of her. The minor is currently enrolled at St. Christopher's school where she is in Year Eight and her sister is in Year Seven. The minor and her sister have been informed of this adoption and its implication and they have consented to it. she already considers the Applicant a mother figure. Both she and her sister have embraced this adoption and have voluntarily provided verbal consent.

The Director of Children Services also filed a Report after conducting a home visit to the Applicant's house in Kilimani where the Applicant resides with the Minor and her sister. They submitted that the Minor appeared to have bonded well with the Applicant and that the Minor and her sister were adequately provided for. It was also submitted that according to an interview with the Minor, she stated that the Applicant had been very supportive to her and the sister since they were young. She stated that she is aware of the proposed adoption and she fully consents to it. The Report submitted that the Applicant had met all the legal requirements for local adoption pursuant to the **Children's Act, 2001** and that they recommend the Adoption.

This is a kinship adoption involving close family relations where the Applicant seeks to adopt her cousin, the Minor herein. This complies with **Section 158 (1) (b) of the Children Act 2001** which provides that, ***"An adoption order may be made upon the application of a sole female Applicant jointly by two spouses where the Applicant or at least one of the joint applicants is a relative of the child."***

According to the facts and submissions from the Reports as elucidated above, this Court is satisfied that the Applicant is socially, financially and physically capable of adopting the Minor herein. She has fulfilled all the prerequisite requirements in **section 156(1) of the children's Act, 2001**. The consent of the extended family and the Minor who is currently 15 years old have been furnished before this Court pursuant to **section 158(4) (a) and (f)** respectively. The consent of the biological mother is hereby dispensed with in light to **section 159(1) (a)** as the same cannot be obtained as reiterated by the facts of this case. Accordingly, this Court holds that the Applicant DR. D G K is hereby allow to adopt W M I, the Minor herein. Henceforth, she shall be known as W M K and she shall be presumed a citizen of Kenya by birth born on 21st November 2001 in Meru County. M M K, sister to the Applicant, is hereby appointed as the Legal Guardian of the Minor should any eventuality arise. The Registrar General is hereby ordered to enter this Adoption order in the Adoption Register and the Guardian *ad-litem* is hereby discharged. It is so ordered.

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

MARGARET W. MUIGAI

JUDGE