



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**ADOPTION CAUSE NO. 244 OF 2013**

**IN THE MATTER OF ADOPTION OF S O (MINOR)**

And

**IN THE MATTER OF THE APPLICATION FOR ADOPTION**

BY

**J M O (APPLICANT)**

**JUDGMENT**

1. The applicant **J M O** seeks to be authorised to adopt **S O O** (minor). The applicant is the uncle to the minor, he is of dual citizenship, that is to say a citizen of both the United states of America and Kenya, he argues that he is a dual citizen of both countries since his American passport was issued before revoking his Kenyan citizenship and after the Kenyan citizenship and Immigration Regulation 2012 came into effect vide a Legal Notice dated 15<sup>th</sup> June 2012. According to him he is a Kenyan National holding ID Card No. *[particulars withheld]*, thus subject to the local provisions of the Kenya Children Act. He works and is a resident of the United States of America. He works as an *[particulars withheld]* and *[particulars withheld]* with *[particulars withheld]* Financial Services Inc. in Pittsburgh, Pennsylvania in the United States of America; that he reside in his own house at *[particulars withheld]* Circle Pittsburgh, *[particulars withheld]*; that he is in a stable financial position and has adequate resources to take care of the material needs of a growing child; that for the child to live with him whilst attending college and in order to obtain subsistence in respect to tuition fees, it is a pre-requisite that the said child has to be under his formal legal care; that he has a comfortable home which is suitable for nurturing a child and ensuring his full development; that he is physically and emotionally fit and healthy and therefore fully competent to take care of the minor; that he has not received or agreed to receive and no person has made or given or agreed to make or give to him any payment or reward in consideration of the adoption; that he has no interests adverse to those of the child; that his brother D O being the legal guardian of the child will take care of the child's welfare in the event of his demise before the child attains the age of majority; that he has discussed the matter with his relatives and they are all agreeable to him adopting of the said minor; that he understand that the effect for adoption is to give him parental rights obligations and responsibility over the minor and that the said minor will have a right to inherit his properties.

2. The minor is his nephew by the virtue of the fact that he is the son to his late sister H A O who died on the 30<sup>th</sup> May 2013. He was born on 17/10/1998 of a single parent, Miss H A O who died on the 30<sup>th</sup> May 2013 and stayed with his grandmother, M A O since then until January 2004. The minor is under the guardianship of Mr. D O and Mrs. N M O pursuant to the Court Order in Children's Case No. 466 of 2008 dated 11<sup>th</sup> February 2009. Since then the child has been under their care and attending schools namely; St *[particulars withheld]* Academy, *[particulars withheld]* Academy and presently *[Particulars withheld]* school in year 10.

3. The minor was declared free for adoption by Kenyans to Kenyans Peace Initiative Adoption society by a letter dated 6<sup>th</sup> December 2013 and a certificate Serial No. *[particulars withheld]* issued on 4<sup>th</sup> day of November 2013. A declaration report from the adoption agency. The Director of Children's Services also filed a report as did the guardian ad litem, **R O O** dated 29<sup>th</sup> November 2014. Both reports were favourable and recommended the adoption of the child by the applicant. Results of report addressed to the Director of Children Services dated 8<sup>th</sup> of December 2014 states that;

*A child habitually resident in Kenya may be permitted to enter and reside permanently in the United States with the U.S citizen adoptive parent (s) if the child is adopted, in accordance with relevant Kenyan Laws and Regulations by prospective adoptive parent(s) who have an approved form 1-800A. The Adoptive parents would need to follow U.S Hague Adoptive Convention laws and procedures and the child must be eligible for immigration under U.S Immigration laws.*

*Any non-citizen child of a U. S. Citizen may acquire U.S citizenship by operation of law if they meet certain requirements of the child citizenship Act of 2000. That law provides for acquisition of U.S citizenship if the child enters the United States as a lawful permanent resident, is under the age of 18, and is residing in the U.S in the legal and physical custody of his/her U.S citizen parent (s). This law applies equally to biological and adopted children. The child will be eligible to receive all benefits of a child born to U.S citizen parents. Generally provided by the laws of the United States. As a citizen of the United States, the child will also have all rights associated with U. S. Citizenship.*

4. The Adoption Society, guardian ad litem and the Director of Children’s Services have all established that the applicant’s is financially and emotionally capable to provide for the up keep and education of the child. The child has no one to parent him save for the applicant and his family. The minor despite the demise of his mother considers the applicant’s family as his own and continues to benefit from the parental love, care and good nurturing from the applicant.

5. After a careful assessment of the reports filed herein, this court has formed the opinion that it would be in the best interest of the child to be adopted by the Applicant. This is a kinship adoption. The application is therefore allowed. The Applicant **Mr. J M O** is hereby allowed to adopt **S O O** (minor). **D O and N M-O** shall be the legal Guardian of the child should misfortune befall the applicant. I direct the Registrar General to enter this order in the adoption register. The child was born in Kenya and is therefore a Kenyan by birth and is entitled to all the rights that accrue to Kenyan Citizens under the Kenya Constitution 2010 and the Kenya citizenship and immigration Act. It is so ordered.

Dated signed and delivered this Day **5<sup>th</sup>** of **February 2015**.

**R. E OUGO**

**JUDGE**

In the Presence of:

.....Applicant

.....Court clerk