



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**Adoption Cause No. 16 Of 2011**

**ORIGINATING SUMMONS ON APPLICATION FOR ADOPTION OF F A**

**J.M.L.H.....APPLICANT**

**JUDGMENT**

The applicant herein **J M L H** seeks to be authorized to adopt **F A** (hereinafter referred to as '*the child*'). The Applicant is a 32 year old female who was born in Kenya but who moved together with her parents at a young age to Seychelles where she has now taken up citizenship. The child is the youngest of the six (6) children of the applicants elder biological sister who resides with his mother and siblings in Mombasa in Kenya. The application was disposed of by way of *vive voce* evidence.

The law in Kenya concerning adoption is to be found in the Children Act 2001. Specifically section 156 (1) of said act provides:

**“No arrangement shall be commenced for the adoption of a child unless the child is at least six weeks old and has been declared free for adoption by a registered adoption society in accordance with the rules prescribed in that behalf.”**

The child the subject matter of this adoption was born on 1st November, 2006 as per the birth certificate (*particulars withheld*). He is now 4 ½ years old well above the six week age limiter provided for by section 156 (1).

The little Angels Network being a Registered Adoption Agency in this country have by their certificate dated 7th March 2012 declared the child free for adoption. As such I am satisfied that all the prerequisites for the adoption have been met.

The Applicant told the court that she is the sister to the biological mother of the child. She states that the child's mother is unable to provide for all her six children as she is a single mother and is unemployed. The Applicant told the court that she is employed in Seychelles as an accountant and makes enough money to provide for the needs of the child. Indeed the applicant testifies that she has been sending money regularly to the child's mother to cater for his upkeep.

**P.W.2 F W** who is the biological mother of the child told the court that she has given her consent for the adoption of the child by her young sister. She confirmed that she is a single unemployed mother and has five (5) other children to cater for. Similarly **P.W.3 K C** the biological father of the child indicated that he gives his unreserved consent to the adoption of his son by the applicants. Both **P.W.2** and **P.W.3** told the court that due to their lack of finances they are convinced that this adoption offers the child the best opportunity for a bright future. With both parents having confirmed their consents in writing I find that Section 158 (4) (a) of the Children Act has been properly complied with.

The Children Act vide Section 4 obliges a court to give **priority** to the **best interests** of the child when deciding whether or not to grant an adoption order. Much material of a persuasive nature has been placed before me. There is a Home Study Report prepared by the Director of Social Services in Seychelles. The report details the investigations conducted by the Social Services Department in Seychelles into the suitability of the applicant as an adoptive parent. This report confirms that the applicant is in stable employment, she lives in her own apartment in the city which apartment is equipped with sufficient room

and facilities to accommodate the child. The recommendation made by the Social Worker in that report is as follows:

**“Taking into account J's positive socio-economic status and F's best interest, the Social Services consider her fit to become her nephew's adoptive parent.”**

I have also perused the report prepared by the Adoption Agency in which they recommended that the adoption proceed. The child is not as a stranger to the applicant and since this is a family adoption the child will be enabled to maintain the family bond with his parents and siblings. I am satisfied that the applicant is motivated by a genuine desire to provide her nephew with the best opportunities for education, social and physical growth. I am satisfied that the relevant consents have been obtained. Finally, I am persuaded that this adoption will serve the best interests of the child in question. As such I do hereby grant the adoption order as prayed. I make no order on costs.

**Dated and delivered in Mombasa this 9<sup>th</sup> day of July, 2013.**

**M. ODERO**

**JUDGE**