

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**MISC CIVIL APPLICATION NO 10 OF 2022**

**IN THE MATTER OF THE LAW OF THE CHILD ACT, CAP 13 R.E  
2019**

**AND**

**IN THE MATTER OF PPK (CHILD) OF NJIRO, ARUSHA**

**AND**

**IN THE MATTER OF AN APPLICATION FOR AN ADOPTION  
ORDER BY VJM OF P.O.BOX 74, BRADLEY WV 25818 U.S.A.**

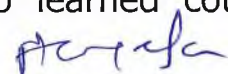
**7/11/2022 & 8/11/2022**

**RULING**

**MWASEBA, J.**

The petitioner, **VJM** (Names withheld to hide identity), has brought this application seeking for an order for adoption of a child **PPR** (Name withheld). It is pleaded that the petitioner is the maternal aunt of the child subject for this adoption.

When the matter was called for mention on 7<sup>th</sup> November, 2022 Mr Felix Kinabo holding brief for Mr Fredrick Simon Kinabo learned counsel




appeared for the petitioner, while Ms Nivoneiya Kikaho appeared as *guardian ad litem*.

Prior to giving any orders to the *guardian ad litem* by the court, the counsel for the petitioner asked for leave to address this court on the jurisdiction of the court to determine the matter. He averred that the application before this court is an open adoption as the petitioner herein is a relative of the child she seeks to adopt. According to the law the application ought to be instituted at the subordinate court. However, the consent letter that they got from the Ministry of Community Development, Gender, Women and Special Groups indicated that the adoption of a child **PPK** be instituted at the High court of Arusha.

So due to the difference of the law and the consent and due to the fact that this court has unlimited jurisdiction in determining variety of cases he prayed that the matter be determined by this court.

Ms Kikaho, *guardian ad litem* did not have comment on legal issues but she admitted that the consent has been written that the application be taken to the High Court of Arusha.

Considering the submissions from the parties herein and the pleadings, the issue for determination is whether the High Court has unlimited jurisdiction to determine an open adoption application. 

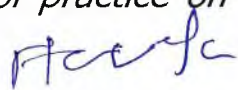
The powers to determine adoption application is well stated under **Section 54(1)(b) of the Law of the Child Act, Cap 13, R.E 2019**

*"An application for "open adoption" shall be made to the Resident Magistrate Court or the District Court."*

In this application there is no dispute that the petitioner and the child to be adopted are related. And there is no dispute that the nature of this application its jurisdiction is vested to the Resident Magistrate Court and the District Court. The only controverse is that the consent is directed to the High Court so they pray that the matter be determined by the High court as it has unlimited jurisdiction.

It should be noted that jurisdiction of the court is a creature of the statute and cannot be conferred by parties to the case. The question of jurisdiction of the court is basic and it goes to the very root of the court. This was well stated by the Court of Appeal in the case of **FANUEL MANTIRI NG'UNDA vs HERMAN MANTIRI NG'UNDA & 20 OTHERS**, (CAT) Civil Appeal No. 8 of 1995 (unreported) that: -

*"The question of jurisdiction for any court is basic, it goes to the very root of the authority of the court to adjudicate upon cases of different nature ... The question of jurisdiction is so fundamental that courts must as a matter of practice on the*




*face of it be certain and assured of their jurisdictional position at the commencement of the trial. ...It is risky and unsafe for the court to proceed with the trial of a case on the assumption that the court has jurisdiction to adjudicate upon the case."*

Being guided by the above authority, I hereby struck out the application for want of jurisdiction and direct the same to be instituted at a proper forum.

It is so ordered.

**DATED at ARUSHA** this 8<sup>th</sup> day of November, 2022.



  
**N.R. MWASEBA**

**JUDGE**

**8/11/2022**