

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

AT ARUSHA

MISC CIVIL APPLICATION NO 13 OF 2022

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

AND

IN THE MATTER OF MAM (A 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.**

RULING

07/11/2022 & 08/11/2022

MWASEBA, J.

The petitioner herein, **VJM** (Name is hidden) beseeches this court for an order of adoption of the child **MAM** (Name is hidden). It is pleaded that the petitioner is the paternal aunt of the child subject for this adoption order.

On 07/11/2022 when the application came for mention, the counsel for the applicant, Mr Felix Kinabo who was Holding Brief of Mr Fredrick

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Simon Kinabo, represented the petitioner and Ms Nivoneiya Kikaho, appeared as *Guardian ad Litem*.

Prior to the hearing of the application, Counsel for the Petitioner sought leave of the court to address regarding the jurisdiction of the court. He argued further that, this is an open application due to the reason that the petitioner is the relative of the child and as per the law this kind of application is determined by the District Court and Resident Magistrate's Court. However, when they received a consent for adoption from the Ministry of Community Development Gender, Women and Special Groups it directed them to file the application at the High Court of Arusha. He argued further that, since the High Court has unlimited jurisdiction, he prayed for the application to be determined by the High Court.

On his side, Ms Kikaho conceded to what was submitted by the counsel for the petitioner and prayed for the application for adoption to be determined by this court.

Having heard the submission from the parties herein, this court will now determine whether the High Court has jurisdiction to determine an open adoption application.



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

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

That being the legal position, it goes without saying that this court has no jurisdiction to determine this matter. It is undisputed facts that this is an open adoption where the law directed it to be determined by the Resident Magistrate Court and District Court. However, the parties herein prayed for this court to determine the application based on the unlimited jurisdiction vested to it by the law.

Regarding the issue of jurisdiction, it was stated in the case of **Shyan Thanki and Others v. Palace Hotel** (1971) EA at 202 that;

"All the courts in Tanzania are created by statute and their jurisdictions are purely statutory. It is elementary principle of the law that parties cannot by consent give a court jurisdiction which it does not possess".

The same was held in the case of **Masoud Mbita & 2 Others v. Daria Rutihinda**, HC-Misc. Civil Application No. 85 of 1998 (Moshi-unreported), in which the Court (Hon. Munuo, J., as she then was) observed:



"The issue of jurisdiction is fundamental, and the lack of jurisdiction renders proceedings a nullity."


That being a legal position, this court is of the firm view that since the law under **Section 54 (1) (b) of Cap 13** R.E 2019, vested jurisdiction to determine an opened adoption to the District Court and Resident Magistrate Court then this court has no Jurisdiction over the matter. Further to that, since jurisdiction is a creature of statute, the same cannot be conferred by the commissioner for social welfare or by parties as alleged by the parties herein.

In the premises, the application is hereby struck out for want of jurisdiction. The petitioner is hereby advised to file her application to a proper forum.

Ordered accordingly.

DATED at **ARUSHA** this 8th day of November, 2022.




N.R. MWASEBA

JUDGE

08/11/2022