



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

ADOPTION 17 OF 2003

IN THE MATTER OF K AN INFANT

AND

IN THE MATTER OF MS AND RS.....APPLICANTS

RULING

1. Vide an Originating Summons dated 4th August 2003, and presented to this court on 19th August, 2003, the applicants herein MS and RS sought authorization to adopt baby K who thereafter was to be known as KS. The court through its orders made on 27th October, 2003 and amended on 17th November, 2003, allowed the application thereby directing as follows;

i. That the applicants, MS and RS be and are hereby authorized to adopt K an infant.

ii. That the infant shall thereafter be known as KS

iii. That the Principal Registrar of Births and Deaths be and is hereby directed to make an entry in the adopted children register concerning the infant K in the form set out in the Schedule hereunder

2. On 24th November, 2020, the applicants moved this court again through a Chamber Summons dated 7th October, 2020 seeking orders;

i. That this application be certified as urgent and service thereof at first instance be dispensed with.

ii. That the firm of Muli & Ole Kina Advocates be granted leave to appear for the applicants in place of the defunct firm of Kapila Anjarwalla & Khanna

iii. That the Honourable court to be pleased to review the orders issued herein on 27th October, 2003 and amended on 17th November, 2003 by directing the Registrar General to make an entry in the Adopted Children Register concerning the infant K in the form set out in the schedule hereunder instead of issuing the said direction to the Principal Registrar of Births and Deaths.

3. The application is premised upon grounds set out on the face of it and an affidavit in support sworn on 7th October 2020 by MS with authority from the second applicant.

4. The crux of the matter is that the adoption order was erroneously directed to the Principal Registrar Births and Deaths instead of the Registrar General who has the mandate to make such entry into the adopted Children Register pursuant to Section 170 of the Children's Act.

5. I have considered the application herein, affidavit in support and oral submission by Mr. Ole Kina counsel for the applicants. Firstly, the issue of legal representation by a counsel of one's choice is a constitutional right enjoyed by a litigant. The firm of Kapila and Co. Advocates having ceased to practice, it is prudent that the applicants get an alternative counsel. To that extent, prayer 1 of the application is allowed.

6. As regards prayer two seeking the court to order the adoption order be directed to the Registrar General to enter the adoption order in the register of adopted children, this is a statutory requirement under Section 170 of the Children's Act. The direction in the adoption order directing the Principal Registrar of Births and Deaths to enter the adoption order in the adopted children register was an oversight and an apparent error on the face of the record which needs to be corrected and or rectified as that office does not have those powers.

7. To facilitate execution of the adoption order, it is important that the amendments sought be allowed. It is my conviction that the application is merited and the same is allowed in terms of prayer 2 and 3 to the extent that the Registrar General shall enter the adoption order issued on 27th October 2003 and amended on 17th 2003 in the adopted Children Register in accordance with Section 170 of the children's Act.

Dated, signed and delivered this 18th day December of 2020.

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J. N. ONYIEGO

JUDGE