

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

MISC. APPLICATION CAUSE NO. 83 OF 2018

IN THE MATTER OF MBS ALIAS SBS AND SBS

BJS.....1ST APPLICANT

SDS.....2ND APPLICANT

RULING

1. The applicants BJS and SDS are a Kenyan couple. In the judgment delivered by Justice M.W. Muigai on 20th December 2018 the court did not allow them to adopt MBS because they had not availed and filed documents showing that they had been allowed to adopt him by the City Civil Court at Bombay. The court allowed them to adopt SBS whose adoption documents by the City Civil Court of Bombay had been filed. In this application for the review of the judgment as it relates to MBS the applicants have sworn, that infact, they had filed the foreign adoption documents in relation to both children, and that it was the court that had misplaced the documents in relation to this child.

2. I consider that under **section 157** of the **Children Act, 2001** any child who is resident in Kenya may be adopted whether or not the child is a Kenyan citizen, or was or was not born in Kenya, provided that the child has been in the continuous care and control of the applicant within the Republic for a period of three consecutive months preceding the application. The court found that the applicants and MBS had met the requirements of this section.

3. Under **section 176** of the **Act** it is provided that:-

“(1) Where a person has been adopted (whether before or after the commencement of this Act) in any place and the adoption is one to which this section applies, then, for the purposes of this Act and all other written laws, the adoption shall have the same effect as an adoption order validly made under this Act, and shall have no other effect.”

4. I have looked at the application filed on 3rd July 2018 that led to the judgment that is sought to be reviewed. The application related to the adoption orders of both SBS and MBS by the applicants issued on 19th December 1992 and 15th December 1998, respectively, by the City Civil Court at Bombay. The supporting documents on the file only related to SBS. These were the notarized adoption orders and deed of adoption. The ones of MBS were not on record. The applicants state that they filed adoption orders and deeds of adoption in regard to both children. They produced copies of the set to that effect that their advocate had filed, and they indicate that both sets were filed and received by the registry. I am satisfied that the applicants filed in court the adoption order and deed of adoption in relation to MBS issued by the City Civil Court of Bombay on 15th December 1998. I am also satisfied that it was the registry that misplaced these documents which led to the court not to allow the recognition of the adoption.

5. I find that, under **Order 45 rule 1(1)** of the **Civil Procedure Rules**, there is sufficient reason to review the judgment dated 20th December 2018 by this court as it relates to MBS. I review the judgment and set aside the order refusing the adoption of MBS by the applicants. In its place, there shall be an order that the adoption of MBS by the applicants BJS and SDS is allowed. In particular, the adoption of MBS by BJS and SDS granted by the City Civil Court of Bombay is adopted by virtue of **section 176** of the **Children Act, 2001**. The court directs the Registrar General to enter this adoption in the Adopted Children Register. The Registrar of Persons is ordered to issue MBS with a Kenyan identity card, and the Department of Immigration to issue the child with a Kenyan passport.

DATED and DELIVERED at NAIROBI this 27TH day of JUNE 2019

A.O. MUCHELULE

JUDGE