



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**FAMILY DIVISION**

**ADOPTION CAUSE NO. 164 OF 2017 (O.S)**

**IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001**

**IN THE MATTER OF ADOPTION OF BABY J N**

**BY**

**B W M (APPLICANT)**

**RULING**

1. The Applicant is a Kenyan citizen currently working with the [Particulars Withheld] in Central Africa Republic as a Human Resources Officer. She has filed an Originating Summons dated 7<sup>th</sup> September 2017 seeking to have the Court's Decree of Adoption issued by the Judge's Chambers in the Republic of Liberia entered in the Adopted Children Register. The Adoption Order, which is dated 21<sup>st</sup> June 2017, was issued by J. Vinton Holder of the Judicial Branch Monthly & Probate Court Montserrado County, R. L Judge's Chambers Republic of Liberia.
2. The child who is the subject of this adoption was received in the Applicant's care while she worked in Liberia with the [Particulars Withheld] between the year 2007 and 2014.
3. The Applicant had by a Petition declared on 19<sup>th</sup> June, 2017 petitioned the Monthly & Probate Court of Montserrado for orders to adopt the child. Upon hearing the Applicant's petition, the Probate court through its judgment of 21<sup>st</sup> June 2017 allowed the petition and ordered that the child be adopted by the Applicant herein.
4. At the time of the adoption, the child was aged six (6) years and lived with her parents, while the Applicant provided for her. The child is currently studying in Liberia and the Applicant ensures that she receives proper and quality education and medical care. The Applicant is seeking to have the child relocate to Kenya where she has her fixed aboard and to attend school locally.
5. On 27<sup>th</sup> July 2018, M/s Sitati for the Applicant submitted that the adoption was done in Monrovia, but the Applicant who is now the child's mother, is Kenyan. Counsel observed that **section 176** of the **Children's Act** gives Kenyan courts power to adopt adoptions done in other countries.
6. The present application is concerned with the adoption of a foreign judgment and decree. The primary law on adoption of foreign judgments in Kenya is the **Foreign Judgments (Reciprocal Enforcement) Act, Cap 43 Laws of Kenya**. Foreign adoption decrees are however not adopted under the provisions of the Foreign Judgments (Reciprocal Enforcement) Act whose **section 3(3)(e)** provides that the Act does not apply to a judgment or order in proceedings in connection with the custody or guardianship of children. Foreign adoption decrees are envisaged under **section 176** of the **Children's Act 8 of 2001** which provides thus:

**“(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.**

**(2) Subsection (1) shall apply to an adoption in any place outside Kenya, if-**

**(a) the adoption order was made by any court of law in the Commonwealth and any court of competent jurisdiction in any other country;**

**(b) ...**

(c) ...

**(3) An adoption order made overseas in favour of an adoptor who is resident in Kenya shall be lodged in the court within the period and in the manner specified in the rules made by the Chief Justice.”**

7. For an adoption order made by a foreign court to be recognized in Kenya as having the same effect as an adoption order made by a Kenyan court, such order must satisfy the conditions prescribed under **section 176** of the **Children’s Act** as cited above.

8. In the instant application, the adoption order was made in Liberia which is not a commonwealth country. The Applicant attached her Petition dated 19<sup>th</sup> June, 2017 filed in the Monthly and Probate Court and the Court’s decree of Adoption dated 21<sup>st</sup> June, 2017 to the instant application. The decree bears the seal of the Monthly and Probate Court, which is the court clothed with jurisdiction to hear and determine applications for the adoption of children in the Republic of Liberia.

9. I have read the attachments as filed, and find that the Decree of Adoption meets the requirements of **section 176(2)(a)** of the **Children Act** which envisages adoption orders made by any court of competent jurisdiction in any other country. The court also notes that the Applicant herein is a Kenyan citizen and holds a Kenyan passport of number [Particulars Withheld].

10. Whereas the Applicant is required to comply with the provisions of **section 176(3)** of the **Children Act** in seeking recognition of the adoption orders, the rules contemplated under this section, which would have provided the procedural law in the making of such applications, are yet to be formulated. Of importance however, is that the orders sought by the Applicant relate to a child and the court will therefore proceed to determine the application as lodged by the Applicant.

11. I bear in mind that in law, in any matter concerning a child, the best interests of a child are paramount. **Article 53 (2)** of the **Constitution** provides the guiding principle on this question as follows:

**“A child’s best interests are of paramount importance in every matter concerning the child.”**

The other relevant law is the **Children Act No. 8 of 2001** and in particular **Section 4(3)** thereof.

12. In the premise therefore, the application dated 7<sup>th</sup> September, 2017 is allowed and the Court’s Decree of Adoption dated 21<sup>st</sup> June, 2017 from the Monthly and Probate Court at Montserrado County in the Republic of Liberia, is hereby recognized as an order made by a competent court. The Adoption Decree shall take effect in accordance with **section 176** of the **Children Act** as an adoption order made by a Kenyan court. The adoption of the child Josephine Nah shall be duly registered in the Adopted Children Register. Costs shall be in the cause.

**SIGNED DATED and DELIVERED in open court this 25<sup>th</sup> day of October 2018.**

.....

**L. A. ACHODE**

**JUDGE**