



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 107 OF 2018

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

IN THE MATTER OF ADOPTION OF SDP (MINOR)

BY

PDM AND SDP (APPLICANTS)

JUDGMENT

1. The Applicants PDM and SDP are in a monogamous marriage which was solemnized under the Bombay Registration of Marriage Act Laws of India, on the 16th day of November, 1999. They have been blessed with two (2) daughters but were not blessed with a son of their own. They wish to adopt the child known as SPP, male child who was born in India, through the Originating Summons dated 2nd August, 2018.
2. From the pleadings, the court gathers that the male Applicant is a Businessman while the female Applicant is a house-wife. They have a residence at Jesarva, Ta.Petlad, Dist.Anand, Gujarat State, India but currently reside in Kenya. The male applicant is a Kenyan citizen having acquired citizenship by registration whereas the female applicant currently resides in Kenya under a Dependant's pass. Both Applicants profess the Hindu faith.
3. Records indicate that the minor in this matter was given up for adoption by his natural parents. The adoption was celebrated on 18th December, 2010 in a gathering at Gujarat state in India, where religious and customary rituals were performed in accordance with the applicable provisions of the **Hindu Adoption and Maintenance Act, 1956** of India.
4. The Adoption Order was issued on 18th December, 2010 by way of a Deed of Adoption by the Sub Registrar Office at Petlad, Gujarat, India. Through the Deed of Adoption, the child's biological mother agreed to give up her son S for adoption.
5. Prior to the adoption, the friends and relatives of both the biological parents and the prospective adoptive parents of the child were invited. The applicants took in the minor for adoption after the performance of religious and customary rituals in full compliance with the applicable provisions of the **Hindu Adoption and Maintenance Act of India** on the 18th December, 2010.
6. The present application is concerned with the adoption of a foreign judgment and decree. 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 India which is a commonwealth country. The Applicants attached to their application a Deed of Adoption declared by both the biological parents of the child and the adoptive parents. The deed was duly registered at the Office of the Sub-Registrar Petlad on 18th December, 2010 and consequently sealed by the seal of that office.

9. Under **section 16** of the **Hindu Adoptions and Maintenance Act, 1956**, whenever any document registered under any law for the time being in force is produced before any court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved. In the premise therefore, I am satisfied that the Adoption deed on the record which was duly registered in India, is valid and satisfies the requirements of **section 176** of the **Children Act 8 of 2001**.

10. Based on the foregoing, the application filed by way of Originating Summons dated 2nd August, 2018 is allowed and the adoption order issued on 18th December, 2010 by way of a Deed of Adoption by the Sub-Registrar Office at Petlad, Gujarat India is hereby recognized as a valid adoption order under the **Hindu Adoption and Maintenance Act**. The Deed of Adoption 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 **SDP** shall be duly registered in the Adopted Children Register.

It is so ordered.

SIGNED DATED and DELIVERED in open court this 18th day of December, 2018.

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L.A ACHODE

HIGH COURT JUDGE