REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

(FAMILY DIVISION)

ADOPTION CAUSE NO. 290 OF 2015

IN THE MATTER OF AN APPLICATION FOR ADOPTION OF BABY J also known as P. W. N

RULING

1. On 25th November 2016 I delivered a judgment wherein I dismissed the suit herein, on the grounds that I was not satisfied as to the identity of the child the subject of the proceedings for the documents presented in evidence did not tally with the pleadings. The applicant has now come back by an application for review of the said judgement to facilitate a fresh hearing of the same. Her application is dated 27th March 2017. It is argued that the name that the child was referred to in the documents, 'G,' had been omitted from the pleadings by the genuine mistake of the advocate drafting the pleadings.

2. Under the Civil Procedure Rules, review of a court decision is founded on an error on the face of the record, discovery of new evidence which was not available at the time the court was making the decision, and any other sufficient reason. In this case, the application is founded on an affidavit sworn by counsel for the applicant, who avers that there is an error on record occasioned by a mistake that she made during drafting of the pleadings. This would suggest that she overlooked the name Gael which was the name given to the child in four of the documents that her client's case was predicated upon.

3. It should be noted that the error or mistake on record that should form basis for review of a court decision should be an error of the court itself. Review is not to be based on an error of the party itself or that of its counsel. Pleadings are documents that are prepared by the parties themselves and thereafter presented by them to court. Should it turn out that the pleadings have errors or mistakes, then it should be up to the parties themselves to correct those errors or mistakes. The remedy available for that purpose is not review, for review is of mistakes or errors of the court, but amendment of the pleadings.

4. A party cannot be heard to ask the court, which has made a decision based on the party's pleadings, which turn out to have errors or mistakes, to review its decisions on the grounds that the court relied on pleadings that had errors or mistakes. It is the duty of the party to have errors or mistakes in its pleadings corrected before the court renders its verdict, for the court cannot thereafter exercise discretion to review its decision where it is asked to do so on grounds that the pleadings that it relied on had errors. A party is bound by its pleadings, and a court is bound to make its decisions following the pleadings as filed.

5. I note from the affidavit of the advocate for the applicant that she concedes that the application is brought after some delay. She appears to blame the court for it, saying that the judgment was delivered without notice to her.

6. I have perused the court file and noted that the matter was originated by a summons dated 11th December 2015 drawn by SK Muendo & Co., Advocates of Standard Building, 4th Floor, Nairobi. There is a record in the file indicating that the court generated a notice of the delivery of the judgement, dated 21st November 2016, for service on the said SK Muendo & Co., Advocates of Standard Building, 4th Floor, Nairobi. The same was returned by the court process server with the endorsement that the said firm of advocates could not be traced at the address indicated.

7. From the documents lodged in the cause on 28th March 2017, the physical address of SK Muendo & Co., Advocates is indicated as Finance House, 7th Floor, Loita Street, Nairobi. It would mean that the said advocates changed their address of service but did not take the caution to alert the court of the same.

Certainly, the court cannot be blamed, the blame falls squarely with the advocates for the applicant. Surely, there is good reason for requiring that parties or counsel do furnish addresses of service. When these addresses change, then the court ought to be informed accordingly. In any event the matter was in the cause list for 25th November 2016. It should be the duty of a party who has a matter in court to remain vigilant.

8. Be that as it may. If I were to act purely on the basis that I was determining a review application, I would have dismissed the application for lacking in merit. I am, however, alive to the fact that this is a matter touching on the welfare of a child. That should have paramountcy over everything else. I am moved to recall the dismissal of the suit, and to direct that the suit be heard afresh. I shall allow the applicant thirty (30) days to file an application for amendment of her pleadings. In default, upon expiry of the thirty (30) days, the order recalling the dismissal shall automatically lapse.

9. It is so ordered.

DATED, SIGNED and DELIVERED at NAIROBI this 30TH DAY OF JUNE, 2017.

W. MUSYOKA

JUDGE