



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MILIMANI
ADOPTION CAUSE NO. 116 OF 2016

N M K THE CHILD

BY

S K.....APPLICANT

R U L I N G

1. The applicant is the adoptive parent of the said N M K (hereinafter referred to as N M K). The Originating Summons dated 20th September, 2016 is brought under **Section 176** of the **Children Act** and **Section 9** and **Section 3A** of the **Civil Procedure Act Cap 21 Laws of Kenya**. The application is also supported by the affidavit of S K sworn on 20th September, 2016. The seeks orders that:

a) the adoption order of N M K made on 29th July, 2015 by the MONTHLY and PROBATE COURT at Monteserrado County, in the Republic of Liberia be received and accepted in the Republic of Kenya and issued by this court as an adoption order made by a Kenyan court.

2. The proceedings herein concern the enforcement of a foreign judgment or decree. The Foreign Judgments (Reciprocal Enforcement) Act, Cap 43, Laws of Kenya is the primary law on enforcement of foreign judgments. In its preamble, it provides that the enforcement of foreign judgments is subject to the principle of reciprocity. Kenya grants reciprocal treatment only to judgments emanating from courts of countries that accord reciprocal treatment to Kenyan judgments.

3. The Foreign Judgments (Reciprocal Enforcement) Act provides the blue litmus paper test for the enforcement of a foreign judgment. **Section 176** of the **Children Act**, should therefore be read in the context of the

4. **Section 176** of the **Children Act** provides a mechanism for recognition and enforcement of foreign adoption decrees outside the provisions of the Foreign Judgments (Reciprocal Enforcement) Act. In essence therefore a person seeking to enforce a foreign adoption decree has an alternative to the provisions of the Foreign Judgments (Reciprocal Enforcement) Act.

5. **Section 176** of the **Children Act** which dwells on the effect of overseas adoptions provides as follows:-

“176(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.”

A foreign adoption decree can therefore be adopted in Kenya through Section 176 of the Children Act and the rules of procedure made thereunder without recourse to the Foreign Judgments (Reciprocal Enforcement) Act.

6. Section 9 of the Civil Procedure Act which has also been invoked by the Applicant provides that:-

“A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim, litigating under the same title, except-

a. Where it has not been pronounced by a court of competent jurisdiction;

b. Where it has not been given on the merits of the case;

c. Where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of Kenya in cases in which such law is applicable;

d. Where the proceedings in which the judgment was obtained and opposed to national justice;

e. Where it has been obtained by fraud;

f. Where it sustains a claim founded on a breach of any law in force in Kenya.”

7. The Originating Summons before me seeks the adoption of the decision made in the Liberian court as one which was made in Kenya. Ordinarily for an adoption order made in Kenya to be complete it entails a declaration that the subject child is a Kenyan citizen by virtue of having been adopted by a Kenyan citizen. Along with the declaration, the Applicant is availed secondary orders directing that the Directorates of Immigration and Registration of Persons to issue N.M.K with a national identification card and passport respectively.

8. The law on citizenship in Kenya is governed by Chapter Three of the Constitution of Kenya, 2010, and the Kenya Citizenship and Immigration Act, Cap 172, Laws of Kenya. N M K is not a Kenyan citizen, and the question is whether by this application she can be declared to be one. She was not born in Kenya nor was she born of Kenyan parents. She is therefore outside the ambit of Article 14 of the Constitution which provides for citizenship by birth.

9. The provision in Section 176 of the Children Act only provides for adoption of an adoption order made by a foreign court. Where a Kenyan court eventually adopts such an order under Section 176 of the Children Act, it would not have the effect of automatically making the adopted foreign child a Kenyan citizen.

10. The child so adopted still has to comply with the requirements of Article 15(3) of the Constitution, Section 14 of the Kenyan Citizenship and Immigration Act and Regulation 10 of the Kenya Citizenship and Immigration Regulations. The adoption of the foreign adoption decree by the Kenya court only avails to the applicant additional documentation that they may present to the Cabinet Secretary as required by Regulation 10 of the Kenya Citizenship and Immigration Regulations 2012.

11. The rules contemplated to be made by the Chief Justice to operationalise Section 176 of the Children Act are yet to be made. Currently therefore there is no framework under the said Act for entertaining applications under Section 176 of the Children Act.

12. The substantive law having however conferred a right under Section 176, the enjoyment of that right should not be curtailed by the omission by the Chief Justice to legislate rules to facilitate enjoyment thereof. This court has inherent jurisdiction to do justice in such circumstances as those in the present case.

13. The adoption order in question was made by a court of law in Liberia. The court takes judicial notice of the fact that Liberia is not a Commonwealth country but adoption orders made by competent courts of that country are among those envisaged in Section 176 of the Children Act. The court also notes that the adoptive parent S K, is a Kenyan citizen by birth and holds a Kenya national identity card issued in 2012.

14. In the premise I allow the application by way of the Originating Summons dated 20th September, 2016 in terms of the prayer sought. The applicant shall bear her own costs.

SIGNED DATED and DELIVERED in open court this **24th** day of **November, 2016.**

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L. A. ACHODE

JUDGE

In the presence ofAdvocate for the Applicant