



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

MISC. APPLICATION NO. 27 OF 2016 (O.S)

IN THE MATTER OF BIRTHS AND DEATHS REGISTRATION ACT CAP. 149 OF THE LAWS OF KENYA

AND

IN THE MATTER OF SECTION 165(1) OF THE CHILDREN'S ACT CAP 141 OF THE LAWS OF KENYA

AND

IN THE MATTER OF AN APPLICATION FOR REGISTRATION OF AN ADOPTION DEED

AND

IN THE MATTER OF S S B

AND

IN THE MATTER OF AN APPLICATION BY A S C

RULING

1. The Originating Summons dated 29th February 2016 invites the court to declare that the Deed of Adoption issued to ASB in India on 25th January 1989 concerning SSB be registered as an adoption order in Kenya.
2. I have perused the Deed of Adoption placed on record. It is dated 25th January 1989 and was made by one SCB through a constituted attorney. In it he states that he had been granted adoption orders, jointly with his wife, ASB, by an Indian Court to adopt one SSB.
3. The said deed is not a court document, neither is it an instrument issued by authorities in India. It is a private document in which the maker avers that he had obtained orders from an Indian court to adopt a child. I doubt whether the said document can be a basis for grant of the orders that the applicant seeks in the application dated 29th February 2016.
4. The effect of an overseas adoption is stated in Section 176 of the Children Act, Cap 141, Laws of Kenya. The relevant provision for such purposes is in Section 176(2) (a) of the Act, which states as follows:-

“Where a person has been adopted ... in any place and the adoption is one to which this section applies, then, for the purposes of this Act and 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 ...”

5. What is envisaged is that where an adoption is made in a Commonwealth Country, it will only be recognized in Kenya if the same was made through an order of a court of law of the Commonwealth country. Anything short of a court order would not be acceptable, and will not be recognized.

6. India is a Commonwealth country. Any adoption emanating from there must be through an order of a court of law of that country. Any person purporting to have adopted a child in India, must place before the Kenyan court a valid adoption order made by a competent Indian court.

7. The document placed before the court for adoption is not an order made by an Indian court. It is a private document made before an advocate or a commissioner or a notary. It does not fall within what Section 176(2)(a) envisions.

8. I need not say more. The Originating Summons dated 29th February 2016 is incompetent. It should be struck out. I accordingly hereby do strike it out.

DATED, SIGNED and DELIVERED at NAIROBI this 9TH DAY OF DECEMBER, 2016.

W. MUSYOKA

JUDGE