



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

ADOPTION CAUSE NO. 153 OF 2015

A W.....APPLICANT

J O E.....1ST RESPONDENT

A M B E.....2ND RESPONDENT

NEW LIFE HOME TRUST.....1ST INTERESTED PARTY

LITTLE ANGELS NETWORK.....2ND INTERESTED PARTY

CHILD WELFARE SOCIETY OF KENYA...3RD INTERESTED PARTY

RULING

Hon. Achode J as Duty Court on 13th August, 2015 issued the following orders;

1. That pending the *interpartes* hearing and determination of the application of the child, the subject matter of this adoption shall be removed from the custody of the Respondent forthwith and placed in the care and custody of Child Welfare Society of Kenya
2. That such removal shall be supervised by the Director of Children Services
3. The security shall be provided by OCS Kilimani Police Station
4. The above orders are in terms of Prayer 3 of the Application and shall be on interim basis
5. That the matter be mentioned before Hon. Ougo J. for directions on 24th August 2015.

Today, Counsel for the 3rd interested party Child Welfare Society of Kenya filed a certificate of urgency seeking the Court to issue a Production Order against the Respondents to produce the child Baby B.M. alias M.O. in compliance with the Court order of 13th August, 2015.

Counsel informed the Court that pursuant to the Court orders, on 13th August, 2015 the Respondents were served with the Court orders. Therefore, on 15th August, 2015 the Police Officers from Kilimani Police Station visited the Respondents' home but did not find them and did not find the child in question.

Counsel informed the Court that the Applicant got wind that the adopting parents intended to remove the child from the jurisdiction of the Court. It is in the best interests and welfare of the child that the child is produced in Court.

Therefore they made the application for a Production Order to issue for the child to be produced in Court

before scheduled for hearing *interpartes* on 24th August, 2015. Counsel came to Court on an *ex parte* application and served the Respondents' Counsel.

The Respondents' Counsel did not object to the application for production order for the child to appear in Court but sought the Court's indulgence on the following grounds;

- a. The Respondents do not intend to take the child out of the Court's jurisdiction they are aware of the Hague Convention and shall comply.
- b. Counsel sought stay of the order of 13th August, 2015 because the Respondents are on safari away from their residence and need time to get back to Nairobi with the subject. Given time Counsel undertook to avail the child to the relevant authorities as soon as possible as per the Court order.
- c. The Respondents were apprehensive since the Court orders were issued, while they were away from their residence the Police in two (2) Land Rovers fully armed with the officials and media personnel stormed to the Respondent's home.
- d. The Respondents are ready to release and give up the child to the authorities.
- e. Counsel applied to the Court that the child should not be taken to Child Welfare Society as ordered but preferably to be taken back to New life Home where the child was before she was released to the adopting parents as she would be in familiar surroundings to reduce the trauma on being taken away.

The Court has considered the submissions of both Counsel on the matter;

At the outset this Court observes;

- a. The orders of 13th August, 2015 are valid made by a Court of equal and competent jurisdiction with this Court.
- b. The orders of 13th August, 2015 are interim orders with an early date for *interpartes* hearing on 24th August, 2015
- c. The Court cannot therefore vary, amend the orders as they have not been complied with in the first place and no new circumstances have been raised to warrant stay of the said orders.

However, in light of the fact that Counsel for the Respondent has presented himself and the Respondents case in Court, and he has undertaken as an officer of the Court to produce the child to the relevant institution as per the Court order; this Court shall allow ample time for the Respondents to come back to Nairobi and implement the Court orders to present the child to the authorities.

The Respondents shall embark on their return with the child the subject matter herein. They shall with the Counsel present the child to the Director of Children Services in the following terms;

FINAL ORDERS

- a. **The child BABY M O (M.O) shall be handed over to the Director of Children Services in their office on Friday 21st August, 2015 at 10.00am in the presence of the Director of Child Welfare Society of Kenya, OCS/OCPD Kilimani Police Station, Counsel for the Applicants, Respondents and Interested parties.**
- b. **The child shall be handed over to Director, Child Welfare Society of Kenya forthwith in compliance with order of 13th August, 2015**
- c. **The child BABY M.O shall not leave the jurisdiction of the Court.**
- d. **The Immigration Department be notified and alerted of this matter forthwith to issue stop orders in all exits.**
- e. **In default of compliance the orders of 13th August, 2015 as enumerated above; immediate removal of the child from the custody of Respondents be implemented by OCS Kilimani Police Station.**
- f. **The matter shall be heard before Hon. Ougo J. on 24th August, 2015 for further directions.**

READ AND SIGNED IN OPEN COURT AT NAIROBI THIS 18TH DAY OF AUGUST 2015

M. MUIGAI

JUDGE