



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION
MISCELLANEOUS CAUSE NO 133 OF 2015
IN THE MATTER OF CHILDREN ACT 2001
IN THE MATTER OF S C S (MINOR)

JUDGMENT

By an application under certificate of urgency, the Applicants, A R S and V A S under **sections 165, 176 (1) (2) & (3) of Children's Act 2001** sought the following orders;

1. That the Court declares the Applicants Sole Guardians of the minor
2. That the Court may grant any other orders it deems fit favorable or expedient

The Applicants through learned Counsel informed the Court that they are a married couple as evidenced by their marriage certificate attached as **ARSI**.

They are Kenya citizens and they attached their respective copies of Identity cards marked **ARS2**.

The minor is their adopted daughter pursuant to a Court order issued by the High Court of Judicature at Bombay, India, marked **ARS3**

The Applicants and minor have lived in Kenya and the minor has studied and completed secondary school education in Kenya. This is confirmed by the letter from [*particulars withheld*] Academy Nairobi dated 15th June 2015 that she completed her IGCSE O' Level education.

The minor has been admitted to University of Hertfordshire in Australia to commence studies in October 2015. She cannot get a Kenyan Passport, as the Applicants do not have a Guardianship Order.

Counsel for the Applicants informed the Court that the Applicants have been with the child for 11years and have catered for her needs. They intend to sponsor the minor for studies in Australia. They have no ulterior motive nor do they intend to harm the minor. It is in the best interests of the minor she pursues education.

The Court sought the presence of both Applicants and minor in Court, which was complied with.

This Court is satisfied that the Applicants have had custody of the child since 2004, pursuant to the court order, in **Petition 47 of 2004** in the High Court of Judicature at Bombay. The applicants were allowed to have the minor live with them, bring her from India on condition periodic reports were made through the Child Welfare Society of Kenya. They have lived with the minor in Kenya; she has pursued formal education and prepared to pursue university education in Australia.

Section 165 of Children Act provides;

“(1) An adoption order of an interim adoption order, may be made in respect of a child who has already been the subject of an adoption order under this Act or under any other Act or Ordinance for the time being in force in any country in the Commonwealth”.

“(2)in relation to an application for an adoption order in respect of such a child, the adopter or adopters under the previous or last adoption order shall be deemed to be the parent or the parents of the child for all the purposes of this part”.

Section 176 of Children Act provides;

“(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)in consequence of the adoption, according to the law of that country, a right superior to that of any natural parent of the adopted person in respect of the custody of the person; and

(c) in consequence of the adoption, the adopter had, immediately following the adoption, according to the law of that country, a right superior or equal to that of any natural parent in respect of any property of the adopted person which was capable of passing to the parent or any property of the person dying intestate without other next-of-kin, and domiciled in that place where the adoption was made and a national of the country which had jurisdiction in respect of that place, but not otherwise”

“(3)An adoption order made overseas in favour of an adopter who is resident in Kenya shall be lodged in the Court within the period and in the manner specified by the rules made by the Chief Justice”.

Therefore the Court adopts the Court order of 7th April, 2004 of the High Court of Judicature Bombay; the Applicants are hereby appointed sole guardians of the minor S C S in accordance with the law.

READ AND SIGNED IN OPEN COURT AT NAIROBI ON THIS 27TH DAY OF OCTOBER, 2015

M.W.MUIGAI

JUDGE

In the presence of;

Mr. Kamenju holding brief for Mr. Mutua for the Applicants.