

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MILIMANI

ADOPTION CAUSE NO. 184 OF 2015 (O.S)

AND

IN THE MATTER OF THE CHILDREN'S ACT

(NO. 8 OF 2001)

AND

IN THE MATTER OF BABY J M

RULING

1. The application I am called upon to determine is dated 22nd October 2015. It seeks that the report of the Director of Children Services be dispensed with and that the applicants' application to adopt the child the subject of the suit be heard on priority.
2. The background to the application is that the court had on 31st July 2015 allowed an application dated 20th July 2015 which had sought appointment of a guardian *ad litem* for the purpose of these proceedings and that the Director of Children Services be ordered to investigate the suitability or otherwise of the applicants to adopt the child and submit a report. The effect of allowing the application was that the proposed guardian *ad litem* was duly appointed and the Director of Children Services ordered to investigate the suitability of the applicants to adopt. A further order was made that the guardian *ad litem* and the Director of Children Services do file their reports within 45 days.
3. In the application dated 22nd October 2015, the applicants complain that the Director of Children Services has declined to obey the order of 31st July 2015, citing a moratorium slapped on international adoptions by the executive vide a gazette notice. They now ask the court to allow the proceedings herein to go on the absence of the report by the Director notwithstanding.
4. I have noted from the record that the suit herein, and indeed the whole process of adoption herein in Kenya, were initiated by the applicants following approval of the proposed adoption by the National Adoption Committee of Kenya. There are two documents on record reflecting the said approval: a letter dated 20th November 2014 and a certificate dated 20th January 2015. The letter, on the letterhead of the Ministry of Labour Social Security and Services and Department of Children's Services of the government of the Republic of Kenya, are signed on behalf of the Director of Children's Services, who also doubled up as the secretary to the National Adoption Committee. The certificate is signed by the Director of Children's Services himself in his capacity as such as well as in his position as secretary to the National Adoption Committee.
5. On the basis of the approval mentioned hereabove the applicants abandoned their lives in their home country, moved into Kenya, took up residence in Nairobi, took custody of the child in question and initiated the suit now before me. This they did at considerable expense and serious inconvenience to themselves.
6. No doubt, it is grossly unjust for the Director of Children's Services to act in the manner that he is conducting himself. By his approval he led the applicants on, and he cannot now turn his back on them.

7. The application before me is by no means the first one. My colleagues have had to decide on similar matters in Nairobi High Court Adoption Causes Nos. 123 of 2015 (OS) and 131 of 2015 (OS) in *In the matters of Baby KR and Baby MB*. In both causes the court dispensed with the report of the Director on the grounds that it is not even a statutory requirement. I shall not reinvent the wheel.
8. I note that there are social and home study reports done on the applicants by institutions and individuals both in Kenya and the home country of the applicants. There is therefore ample material upon which the court can finally dispose of the matter even without the report by the Director of Children's Services.
9. I allow the application dated 22nd October 2015 in terms of prayers 2 and 3 thereof. The suit shall be heard as a matter of priority by any Judge in the Family Division on a date to be given at the registry.

DATED, SIGNED and DELIVERED at NAIROBI this 18TH DAY OF DECEMBER, 2015.

W. MUSYOKA

JUDGE