



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

ADOPTION CAUSE NO.9 OF 2014

IN THE MATTER OF CNO(CHILD)

(HEREINAFTER REFERRED TO AS “THE CHILD”)

AND

IN THE MATTER OF CHILDREN ACT 2001

AND

IN THE MATTER OF AN APPLICATION FOR ADOPTION

PBN (APPLICANT)

(HEREINAFTER REFERRED TO AS “THE APPLICANT”)

REVIEW JUDGMENT

1. On the 1st August 2014, I delivered judgment in this matter declining to grant order of adoption in respect of the child herein, CNO on grounds that the Child Welfare Society of Kenya (CWSK) did not as at 29th May 2013 have a current registration to make adoption arrangements. This conclusion was reached despite the fact that the CWSK had been exempted from registration by the Cabinet Secretary for Gender, Children and Social development.

2. The applicant being aggrieved by my findings of 1st August 2014 filed an Ex-parte Notice of Motion dated 6th August 2014 seeking a review of my above stated judgment. The application is premised on grounds that:-

- a. *The judgment was made per incuriam;*
- b. *There is an error on the face of the record.*

3. The application was also supported by the sworn affidavit of Kennedy N. Nyasimi, advocate who has conducted this matter on behalf of the applicant. Annexed to the affidavit is a copy of the Special Issue of the Kenya Gazette Supplement No.72 (Legislative Supplement No.23) under Legal Notice No.58 of 23rd May 2014. Under the said Legal Notice, the CWSK Order, 2014 was issued establishing the CWSK as a State Corporation whose objective **“is to provide a legal and institutional framework for the care, control, protection, welfare and adoption of children through the establishment of the CWSK.”** The Order was issued pursuant to **Section 3 (1) of the State Corporations Act Cap 446, Laws of Kenya.** The whole section reads:-

3. “3(1) The President may, by order, establish a State Corporation as a body corporate to perform

the functions specified in the order:-

(2) A State Corporation established under this section shall -

- a. **have perpetual succession;**
- b. **in its corporate name be capable of suing and being sued;**
- c. **subject to this act, be capable of holding and alienating movable and immovable property.”**
- d.

4. Section 4 of the **CWSK Order 2014** establishes the CWSK as a State Corporation while Section 6 thereof sets out the functions of the Society and under **Section 6 (1) (c)** thereof, the **CWSK** is established as the National Adoption Society to facilitate adoption.

5. It is thus clear to me from the above information that the letter dated 29th May 2013 from the Director, Children Services and Secretary of Adoption which informed the conclusions in my judgment dated and delivered on 1st August 2014 had already been overtaken by Legal Notice No.58 of 23rd May 2014.

6. In the premises, there is sufficient cause to warrant a review of my judgment of 1st August 2014. Accordingly, I hereby set aside the order refusing to grant prayer (1) of the Originating Summons dated 5th June 2014 and in lieu thereof, I allow the said O.S. in terms of prayer (1) thereof, namely that an adoption order do hereby issue in respect of the child herein in favour of the applicant, PBN.

Orders accordingly.

Delivered, dated and signed in Chambers at Kisii this 29th day of August, 2014

R.N. SITATI

JUDGE

In the presence of:-

Mr. Ondari h/b for Nyamori Nyasimi for Applicant

Mr. Bibu - Court Assistant