



REPUBLIC OF KENYA

HIGH COURT OF KENYA AT NAIROBI

MISCELLANEOUS APPLICATION NO. 121 OF 2014

IN THE MATTER OF SECTIONS 176, 4, 22 AND 113 OF THE CHILDREN'S ACT, 2001

AND

**IN THE MATTER OF THE COURT OF DISTRICT JUDGE AT ALWAR- RAJASTHAN INDIA
OF 16TH MARCH 2004**

AND

IN THE MATTER OF K M S (MINOR)

AND

EXPARTE APPLICANT.....R M K S

RULING

The application before court is exparte Summons dated 27th June 2014. The application is predicated on the provisions of **Section 176** of the **Children Act, 2001**. The Applicant seeks an order from this court to register the adoption order of court of District Judge, Alwar District, Rajasthan-India given on 16th March 2004. The said order concerns the adoption a minor named S (herein after referred to as "**the minor**"). The Applicant further seeks an order from this court granting the said minor Kenyan citizenship thereby allowing her to be issued with a Kenyan passport. The facts of the case are as follows. The applicant is R M K S. She is married to M K S. The applicant deponed that on 16th March 2004 the District court at Alwar, India allowed the adoption of the minor by both the applicant and her husband in terms of the Adoption laws in India under the **Hindu Adoption and Maintenance Act, 1956**. The same was registered by a deed dated 20th March 2004. A birth certificate was subsequently issued to the minor in the name K. The applicant and her husband were citizens of India at the time but have since obtained Kenyan citizenship upon renouncing their Indian citizenship. The minor subsequently travelled to Kenya with both parents. According to the Applicant, her husband has secured and taken up a job in Canada and it was her wish that she and the minor join him there. The application was necessitated after the applicant's visit to the Department of Immigration to secure a travel visa for the minor.

The criteria for recognizing the validity of a foreign adoption order is set out under **Section 176** of the **Children Act**.

Section 176 of the **Children's Act** reads:

"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 in 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 that country which has jurisdiction in respect of their place, but not otherwise.

3. An adoption 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."

The Applicant is therefore required to satisfy the conditions in **Section 176(2)** of the Act. Unfortunately, the Chief Justice has not made Rules envisaged under **Section 176(3)** of the **Children Act**. Therefore, before I determine whether to recognize an overseas adoption, I must first consider the question whether the adoption order was lawfully obtained in the foreign jurisdiction. Second, whether the concept of adoption in the foreign jurisdiction substantially conforms to the concept of adoption in Kenya. Dealing with the first question, looking at the adoption deed annexed, I am satisfied that the adoption order in this case was approved by the local court in India and is a valid adoption for the purpose of Indian law. In considering the second question, adoption under the **Hindu Adoption and Maintenance Act (1956)** adoption has a similar effect as an adoption under the **Children's Act, 2001** thereby satisfying the second test.

In the premises therefore, the ex parte summons dated 27th June 2014 is allowed as prayed. The adoption order of District Judge, Alwar District, Rajasthan-India made on 16th March 2004 be and is hereby Registered as the order of the court. The child now called K M S shall be registered as a Kenyan citizen. It is so ordered.

DATED AT NAIROBI THIS 29TH DAY OF OCTOBER, 2014

L. KIMARU

JUDGE