



REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (FAMILY DIVISION)
CIVIL SUIT NO. 3 OF 2014
IN THE MATTER OF A K M & R M (CHILDREN)

AND

IN THE MATTER AN APPLICATION BY

F K K.....1ST APPLICANT

K L M.....2ND APPLICANT

VERSUS

THE HON. ATTORNEY GENERAL1ST RESPONDENT

THE REGISTRAR OF BIRTHS & DEATHS.....2ND RESPONDENT

THE IMMIGRATION & REGISTRATION OF PERSONS.....3RD RESPONDENT

RULING

Before this Court is an application brought under Article 53 of the Constitution, Section 4 & 11 of the Children’s Act. The 1st applicant seeks to be granted the legal and actual custody of the child A K M & R M. She also seeks to have the 2nd applicant’s name be deleted and/or removed as the father in the birth certificate of A K M and that the 3rd respondent be ordered to delete the name of K L M from the Birth Certificate of A K M.

In her affidavit she explains that she is a Kenya citizen and the 2nd applicant is an Australian Citizen. That A K M aged 7 months at the time of filing the application was born on the 8/8/2013. That at the time of registering the child, he was given the name of the 2nd applicant believing that he was the father. That she is committed to marrying the 2nd applicant. That when she went to apply for an Australian Visa she was subjected to a DNA test which revealed that the 2nd applicant is not the biological father to A. She explains that she then realized that the child was as a result of a rape that took place on the 19/11/12. That she did not follow up on the rape because she was traumatized but she has since reported the ordeal to Riruta Police station. That she is therefore desirous to remove the name of the 2nd applicant. The 2nd applicant filed an affidavit dated the 25th March 2014 giving a background on the relationship he has with the 1st applicant and their intentions to get married and the process they have had to undergo for the 1st applicant to get an Australian visa. He avers that he has consented to the removal of his name from the child’s birth certificate.

The application was opposed Mr. Soita for the respondent stated that he Registrar did his part after the information was given by the applicant's. That the applicant gave false information and that the rape report is being used to justify the giving of false information. That she has not failed to exhibit the O. B of the alleged report nor has the applicant show that investigations being carried by the police. Mr. Soita submitted that later on the biological father of the minor may come up and seek to have another change. He referred to section 22 of the Birth and Deaths Registration Act that provides the penalty for giving false information. In reply Mr. Chigiti stated that the Registration Act is silent on how a name can be deleted from the record. He urged the court to take the best interest of the child into consideration as provided in section 4 of the Children's Act and Article 53 of the Constitution. On section 22 of the Birth and Death Registration Act he submitted that the information that was given to the Registrar was an innocent mistake and not intentional and that the respondents can pursue the case if they wish. On the issue of reporting the occurrence of the rape incidence it was submitted that under the Sexual Offences Act there is a procedure on how to prosecute the alleged rapist and that should not weigh down the applicants application.

I have considered what has been deponed in the affidavit of the applicant together with the submissions made in court. Article 53 of the Constitution provides every for the rights of every child. One of them being the right to a name and not nationality from birth. Article 53 sub article (2) provides that a child's best interests are of paramount importance in every matter concerning a child. Section 4 of the Children's Act provides for the survival and best interest of the child. The said section emphasizes the importance of taking the best interest of the child to be of the primary consideration. Section 11 of the Children's Act provides that every child shall have a right to a name and nationality and that where a child is deprived of his identify the Government shall provide appropriate assistance and protection with a view of establishing his identity. In the matter before this Court the applicant's child has not been deprived of his identity. The issue is that he was given a wrong identity. Reasons for doing so have been stated by the applicant. As to whether what she did amounts to giving false information that is for the police to decide if the Attorney General takes any action. So as I consider the application I am guided by the provisions of law cited. Any child has a right to a name and Nationality.

The applicant states she is the biological mother of the child A K M. She seeks to have the name of the 2nd applicant deleted or removed as the father in the birth certificate of A K M. I have gone through the Births & Deaths Registration Act and I agree with Counsel that the said act does not provide for cases such as this one. Should I believe the applicant? I ask myself this because in considering whether to grant the orders sought I have to bear in mind the best interest of the child. The applicant has readily admitted her mistake she seeks to have the change made due to the reasons given. They appear reasonable and I give her the benefit of doubt. Considering what has been deponed and the interest of the child. I find no reason why the 2nd applicant's name should remain in the register as the father of the minor. The 2nd applicant does not object to the application. I therefore order that the name of the 2nd applicant **K L M** shall be deleted and removed as the father in the Birth Certificate of **A K M**. I also order that the 3rd Respondent deletes the name of **K L M** from the Birth Certificate of **A K M**. No orders as to costs.

Orders accordingly

Dated, signed and delivered this **19th** day of **November 2014**.

R. E OUGO

JUDGE

In the presence of:

.....**1st and 2nd Applicants**

.....**Respondents**

.....**Court Clerk**