



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MILIMANI
ADOPTION CAUSE NO. 108 OF 2013 (OS)
AND
IN THE MATTER OF THE CHILDREN'S ACT
(NO. 8 OF 2001)
AND
IN THE MATTER OF BABY J J T R (MINOR)
AND
P W J R.....1ST APPLICANT
D O.....2ND APPLICANT
JUDGEMENT

The Originating Summons dated 6th May 2013 seeks that an adoption order made by the Juvenile Court of Kinshasa in the Democratic Republic of Congo on 28th May 2012, and issued on 23rd July 2012, be made an order of this court. The application is premised on section 176 of the Children Act and Section 9 of the Civil Procedure Act.

The applicants are Belgian citizens, resident in Kenya. The first applicant is an employee of the [particulars withheld]. The second applicant is his wife. She is of Congolese origin. The order made by the Juvenile Court of Kinshasa allowed the adoption of J J T R (minor) by the applicants. The subject child has been issued with a passport of the Democratic Republic of Congo in the name of the first applicant.

Section 176 of the Children Act, upon which the application is predicated, provides that:

1. Where a person has been adopted (whether before or after the commencement of the 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 national 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 the other next of kin, and domiciled in that place where the adoption was made and a national of the country which has jurisdiction in respect of their 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 rule made by the Chief Justice.

According to this provision an adoption order made by a foreign court can be received and respected in Kenya, However, for such adoption to be received and respected in Kenya in terms of it having the same effect as an adoption order made by a Kenyan court under the Children Act of Kenya, the foreign adoption must satisfy the conditions set out in **Section 176(2)** of the Children Act.

The adoption order the subject of these proceedings is foreign, made by a Congolese court. If it satisfies the conditions set out in **Section 176(2)** it would have the same effect in Kenya as if it was made by a Kenyan court under the Children Act. The full text of the judgement of the Juvenile Court of Kinshasa delivered on 28th May 2012 and sealed on 23rd July 2012 is attached to the application. I am satisfied from its contents that the adoption order the subject of these proceedings satisfies the conditions set out in **Section 176(2)** of the Children Act.

Section 176(3) of the Children Act requires that the foreign adoption order be lodged in court in accordance with rules to be made by the Chief Justice. I have perused through the subsidiary legislation to the Children Act and I have not encountered rules made by the Chief Justice to actualise **Section 176(3)** of the Children Act. That provision nevertheless expects that before a foreign adoption order is applied in Kenya it ought to be lodged in the Kenyan court. That is precisely what the applicants have done in this case.

I note that this application has been necessitated by the demand of the applicants' home country's embassy in Kenya that the said adoption order be recognised first by their resident country before their home country, Belgium, recognises it. This is a children's matter, **Section 4** of the Children Act requires me to treat the interests of the child as of primary importance. The absence of rules by the Chief Justice to facilitate the lodging of the foreign adoption order should therefore not stand in the way of my exercising discretion to allow the said order to be lodged in this court for the purpose of it being recognised as an order of a court of competent jurisdiction having the same effect as an adoption order made by this court. I believe proceeding in that manner would be in the best interests of the child in question.

I do hereby receive the adoption order made by Juvenile Court of Kinshasa made in RC 4012 on 28th May 2012 pronouncing the adoption of J J T R (minor) by P W R and D O. The said order is hereby recognised as an order made by a competent court and it is hereby declared that the said order shall have effect in Kenya as an adoption order made by a Kenyan court. Costs shall be in the cause.

DATED, SIGNED and DELIVERED at NAIROBI this 30th day of August, 2013.

W. M. MUSYOKA

JUDGE