



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI (NAIROBI LAW COURTS)**

**Adoption Case 141 of 2003**

**IN THE MATTER OF THE CHILDREN'S ACT 2001**

**IN THE MATTER OF BAO (INFANT)**

**RULING**

Before me is an Originating summons for the adoption of *BAO*, *NAO*, *JOO* and *EOO* (infants) dated 18<sup>th</sup> December, 2003. The originating summons was filed by *JANET ODERO & COMPANY* Advocates on behalf of the applicants *JOO* and *GFO*

This Originating Summons was filed under Adoption Case No. 141 of 2003, which has documents on *BAO*. The other children to be adopted have also their own separate files. *NAO* is subject to the Originating Summons in *Adoption Case No. 118 of 2004*. *EOO* is the subject for adoption in *Adoption Case No. 119 of 2004*, and *JOO* is the subject in *Adoption Cause No. 202 of 2004*.

On the 14<sup>th</sup> June 2006 Mrs Majiwa for the applicants requested Hon. Justice Kubo to consolidate Adoption Cause files Nos.118 of 2004 relating to *NAO* ; *No. 119 of 2004* relating to *EOO* ; *No. 141 of 2003* relating to *BAO* ; *No. 142 of 2003* relating to *BAO* ; *No. 202 of 2004* relating to *JOO* and file No. 2 of 2004 relating to *BWO* .

From the record, I find that Hon. Justice Kubo did not consolidate the subject files, but made the following orders:-

“Director of Children’s Services to investigate if the children subject matter of all the 6 applications alluded to above can be adopted by the applicants and file reports. This order applies to all the six (6) files alluded to herein.”

On the 10<sup>th</sup> November 2006 Mrs Majiwa informed me under certificate of urgency in adoption Cause No. 141 of 2003 that the file relating to *BAO* had been consolidated with file Nos. 142 of 2003; 118 of 2004; 119 of 2004; 202 of 2004, and 92 of 2004. She informed me that the consolidation was done because the applicants are the same.

On the 1<sup>st</sup> December 2006, the matter in file 141 of 2003 with regard to the adoption of *BAO* came up for hearing before me. Evidence was given on the assumption that there was a consolidation of the several files, which was erroneous.

Because of the erroneous assumption that several files were consolidate, evidence was given with respect to only this files, that is, Adoption Cause No. 141 of 2003 where the subject for adoption is *BAO* ; and Adoption Cause No. 92 of 2004 where the subject for adoption is *BWO* .

I have already made a ruling in file No. 92 of 2004 with regard to the adoption of *BWO* that, in my view, the applicants being American Citizens, though the 1<sup>st</sup> applicant was initially a Kenya citizen by birth, and they not being resident in Kenya, the adoptions appear to be international adoptions. Therefore, in my view, the legal provisions on international adoptions under the Children Act No. 8 of 2001, especially section 162 have to be complied with. In Adoption Cause No. 92 of 2004 for the adoption of *BWO* , I have asked the Director of Children Services to file a further report relating to the international

nature of the adoption, and whether the requirements of the law on international adoptions have been complied with. That additional report by to filed by the Director of Children Services will apply to each of this file **No. 141 of 2003 BAO** ; file **No. 191 of 2004 EOO** ; file **No. 202 of 2004 JOO** ; as well as 92 of 2004 **BWO**, and file No. 142 of 2002 BAO and file No. 118 of 2004 NAO.

I observe that the attempt to have the files mentioned above consolidated, has created confusion. In any case, there was no order for consolidation of the cases by the court. Therefore, in my view, counsel mislead me that the files or cases were consolidated. I also think that each cause should be heard separately as the issues and evidence could be different for each case though the applicants might be the same persons.

In the interests of justice, therefore, I order that after the Director of Children Services files his reports in each file mentioned above regarding compliance with the requirements for international adoptions, each will cause be heard further **BEFORE ME ON PRIORITY BASIS ON Mondays or Wednesdays** afternoon.

DATED and delivered at Nairobi this 23<sup>rd</sup> March, 2007.

**GEORGE DULU**

**JUDGE**

In the Presence of –