



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Adoption Cause 141 of 2003
IN THE MATTER OF THE CHILDREN ACT NO. 8 OF 2001
IN THE MATTER OF BOO. (INFANT)
J U D G M E N T

Before me is an Originating Summons dated 5th May 2004 filed by Janet Odero & Company advocates. It seeks for the following orders, that –

1. AMO of P.O. Box Number [particulars withheld] Nairobi be appointed to act as guardian ad litem.
2. The consent of the natural parents be dispensed with based on the affidavit of JOO.
3. The applicants JOO and GFO be authorized to adopt the infant BAO.

The Originating Summons was supported by the affidavit of JOO sworn on 16th February 2004 seeking for dispensation with the biological parental consent for the proposed adoption. It is also supported by the affidavit of both applicants JOO and GFO sworn on 16th February 2004.

This application will not succeed.

I do not see the point of going into the merits of this application, because it fails on a legal technicality. This is an application for the adoption of a “*child*”, and it is brought under the provisions of the Children Act No. 8 of 2001. Under sections 2 of the Act, a child is defined as follows –

“*child*” means any human being under the age of eighteen years.

The child proposed to be adopted is **BA**. According to her birth certificate No.[particulars withheld] issued on 27th May 2003, the said **BA** was born on 14th November 1988. The Originating Summons was filed on 5th May 2004 when she was still a child. The guardian *ad litem* seems to have been appointed on 21.05.2004 by Hon. Justice Waweru. Thereafter the matter did not progress. There appears to have been changes of advocates from Janet Odero & Company advocates, to Joyce Migunda Majiwa advocates and finally to Amuga & Company advocates. The initial report of the Director of Children Services was filed on 10th November 2006, which was less than a week before the child attained majority age of 18 years. On the same 10.11.2007 Ms. Majiwa counsel for the applicants appeared before me and informed me that this matter, together with other related adoption matters were urgent. I declined to certify the matter as urgent and a hearing date was later taken in the registry for 1st December 2006. On that date, the matter was heard and judgment reserved for 9th February 2007. It was adjourned to 23.3.2007. On 23.3.2007, I gave a ruling that the matter appeared to be an international adoption caused asked the Director of Children Services to file another report addressing the international aspects of the proposed adoption. That report, dated 7th June 2007, was filed on 3rd July 2007.

It is possible that this application delayed because of changes of advocates and also because the applicants had filed a record total of seven (7) adoption applications. It is also possible that the counsel for the applicants did not progress this matter because they did not get instructions from the applicants who have been in the USA, and whose filed documents appear to have been prepared in the USA without them coming here to Kenya. Be that as it may, I cannot issue the adoption orders sought in this application, as the person to be adopted is above the age of 18 years. I will therefore dismiss the application on that legal technicality without going into its merits. The application is dismissed.

Dated and delivered at Nairobi this 5th day of November, 2007.

George Dulu

Judge

In the presence of –

Mr. Amuga for the applicants

Mr. Okumu holding brief for Mr. Amuga for the applicant

Mr. Wamakobe for Director of Children Service - absent

Eric – court clerk