



**REPUBLIC OF KENYA
IN THE MATTER OF THE CHILDREN ACT, 2001
AND
IN THE MATTER OF JVAL. (A CHILD)**

RULING

On 29th November, 2007 CJA of Buruburu Estate in Nairobi Kenya and also of [PARTICULARS WITHHELD], Florida, USA filed originating summons stated to be brought under the various sections of the Children Act, 2001 specified therein. The principal prayer in the originating summons seems to be prayer 2, namely:

‘2. That the applicant CJA be vested with Physical and Legal Custody of the minor, JVAL pending the hearing and determination of the Adoption Application herein.’

Simultaneously with the originating summons, the applicant filed chamber summons application also dated 29th November, 2007, *inter alia*, seeking the same principal prayer. The application was accompanied by a certificate of urgency.

On 30th November, 2007 the application went before the Duty Judge, Family Division, Onyancha, J who fixed it for hearing on 3rd December, 2007.

On 3rd December, 2007 the matter went before Aluoch, J who directed that evidence that the child is available for adoption be produced in court.

On 6th December, 2007 the applicant filed another certificate of urgency of the same date to the effect that documentary evidence of the child’s availability for adoption has been availed by the Child Welfare Society of Kenya. The certificate of urgency added as follows:

‘....The child will be denied a visa in the American embassy on 7th December 2007 as they cannot process any of the minor’s travel documents without the order of this court that the intended adoptive parent has the guardianship of the minor pending the issuance of the Adoption Order. The application dated 29th November, 2007 remains urgent.’

Today, the 7th December, 2007 the matter came up before me as Duty Judge in the Family Division. The applicant was represented by learned counsel, Mr J.H. Kinyanjui.

The court record confirms that the Child Welfare Society of Kenya has vide its report dated 4th November, 2007 declared the child free for adoption as required by law.

I noted from the originating summons that although it indicates itself as an application for an adoption order, it does not contain a specific prayer for the applicant to be authorized to adopt the child in question. This omission was drawn to applicant’s counsel’s attention and he sought and obtained a short adjournment to institute an amendment to rectify the omission, which he did. There is now an Amended Originating Summons dated and filed on 7th December, 2007 containing a specific prayer for adoption of the child.

I have given due consideration to the chamber summons dated 29th November, 2007 and its supporting affidavit evidence and annexures.

I note from paragraph 15 of the applicant’s affidavit sworn on 28th November, 2007 that the child’s late mother, apparently in anticipation of her death, did vide a written document dated 29th August, 2006 authorise her own mother, EA2 and the deceased’s two sisters, CA and RA to take care of the said deceased’s two children, i.e. EA1 and CJA in case of the said mother’s death. The subject child’s mother, VAA subsequently died at Kenyatta National Hospital, Nairobi on 3rd November, 2006. EA2 has now attained majority age and the court has been told he is employed in the *Matatu* industry. He is not a subject of these proceedings. The subject child, JVAL was born at Buruburu, Nairobi on 7th December, 1991 and is 16 years old today. Applicant’s counsel informed this court that unless the applicant gets an order by today giving her guardianship of the child pending issuance of an adoption order, the child cannot get a visa from the American Embassy in Nairobi to enable her to travel to the U.S.A where the applicant has in the interim period arranged for her education.

The applicant is a maternal aunt of the child, JVAL. She now resides and works for gain in the U.S.A. She had taken an overt act towards adopting the child but that process will take some time. She seeks interim custody of the child, and to take the child out of jurisdiction to the U.S.A where she has made arrangements for the child's education while formal adoption proceedings are being processed.

The applicant parted ways with her husband who apparently remained behind in Kenya while the applicant proceeded to the U.S.A. as aforesaid.

I am satisfied on evidence availed to court that a guardianship order of the child in favour of the applicant would be in the child's best interests pending the processing of the adoption proceedings filed in court regarding the child. I make the following orders:-

1. The child, JVAL is hereby made a ward of the court.
2. The applicant is granted guardianship and temporary custody of the child and allowed to take the child out of this court's jurisdiction pending hearing and determination of the pending adoption proceedings relating to the child.
3. Unless specific exemption is sought and obtained, the applicant shall present herself and the child at the hearing of other applications pertaining to the pending adoption proceedings,.
4. The applicant and the child shall be present at the hearing of the substantive adoption application.
5. The applicant shall deposit in court Kshs.500,000/= as security in this cause prior to temporarily taking the child out of jurisdiction.

Orders accordingly.

Delivered at Nairobi this 7th day of December, 2007.

B.P. KUBO

JUDGE

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