

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET
Adoption Cause 1B of 2003

IN THE MATTER OF THE N.K.T.

E.K. APPLICANT

RULING

Before me is an ex- parte Chamber Summons dated 1st December 2005 filed by Billy Amendi & Co. on behalf of the applicant E.K. The application was brought under certificate of urgency. It was purported to be brought under O.XLIV Rule 1 Civil Procedure Rules. The application seeks for two substantive orders that :-

1. This honourable court be pleased to review the orders of 26th May 2004 granting the custody of the infant K.A. (N.K.T.) to the applicant herein.
2. Consequently, the applicant be granted an adoption order as sought in the Originating Summons dated 3rd March 2003.

The application has grounds on its face and is supported by the affidavit sworn on 1st December 2005 by Kiplagat J.Misoi advocate. The grounds of the application are firstly, that there is an error apparent on the face of the record , secondly, that the orders sought were those of adoption, and thirdly, that there have been no unreasonable delay in making the application.

At the hearing of the application Mr. Misoi for the applicant submitted that there was a mistake on the face of the ruling of the court dated 26th May 2004. The prayers sought in the Originating Summons were for adoption, not for custody. The court made an error in granting custody in the ruling as those were not the prayers sought. He therefore urged the court to review its ruling and grant the order of adoption as prayed in the Notice of Motion.

I have considered the application and submissions of Mr. Misoi. I have also perused the Originating Summons and my ruling of 26th May 2004. It is evident that prayer (2) of the Originating Summons dated 3rd March 2003 specifically asked for an order of adoption of the infant by E K - the applicant. The report from the District Children's Officer Nandi North/ South District dated 16th February 2004 also clearly recommended the adoption of the infant K.A. by the applicant. However my ruling of 26th May 2004 granted custody of the infant to the applicant.

I am satisfied that the order that I issued for custody in my ruling of 26th May 2004 was an error. The correct order should have been an order for the adoption of the infant. I am of the view that the justice of the matter requires that I review my earlier order. I therefore hereby review my order of custody of 26th May 2004 and substitute it with an order that I grant the ADOPTION of the infant K.A. (N.K.T.) to the applicant E.K. as prayed in the Originating Summons.

Dated at Eldoret this 5th day of December, 2005.

George Dulu

Ag. Judge

In the presence of: