



**IN THE MATTER OF THE CHILDREN'S ACT CHAPTER 588 LAWS OF KENYA**

**IN THE MATTER OF EIM-A CHILD**

**RULING**

The applicants have moved this court by way of a Miscellaneous application brought under Section 4 (2), (3) (a) and (b) of the Children Act. They seek for orders that the infant's continuous residence with the applicants in the United States of America be deemed to be adequate for purposes of satisfying sections 157 of the Children Act.

That the infant is related to the 1st applicants as a step brother. The infant is visiting the 1st applicant on visitor's visa for the last 10 months

The infant has bonded very well with the applicants family and there are tremendous opportunities and the adoption will be to her best interest and welfare. The applicants have sworn an affidavit filed on 26th March 2004 stating that it will be difficult for them to reside in Kenya for the statutory period of 3 months in order to comply with the statutory provisions of section 157 of the Children Act 2001.

This is an adoption within the family. The biological parents of the infant have duly given their consent, but I find the provisions of Section 157 restrictive in two aspects:

- i) The child to be adopted should be resident within Kenya.
- ii) No application for an adoption order, shall be made in respect of a child unless the child concerned has been in the continuous care and control of the applicant within the Republic for a period of three consecutive months proceeding the filing of the application.

It would appear that the applicants have a genuine problem in complying with the above provision but it is my considered view that this prayer being sought in this miscellaneous application would be best addressed during the hearing of the application for adoption. At the hearing of the application the prayer shall be canvassed substantially and the court that will determine the adoption order will be better equipped to objectively evaluate the applicants, the minor and the exercise the court's jurisdiction on whether or not to waive the period of 3 months. The court will have a better opportunity during the trial to closely make an assessment of the parties and materials presented.

Accordingly I direct the applicant to seek for the waiver in the adoption matter.

It is so ordered.

**Ruling delivered and signed on 31st March 2004.**

**MARTHA KOOME**

**JUDGE**