



**IN THE HIGH COURT OF KENYA AT KISII**

**MISC.APPLICATION NO.54 OF 2004**

**IN THE MATTER OF ADOPTION ACT –versus- IN THE MATTER OF M (INFANT)**

**AND**

**DS) ..... APPLICANTS**

**OS )**

**RULING:**

On 9th January 2004 an application dated the 5th January 2004 was presented before Chief magistrate Kisii (MR. N. ITHIGA) under the ADOPTION ACT seeking two orders:-

1. That Boniface Omollo be appointed guardian-ad-litem of M (The infant).
2. That the applicants herein be authorized to adopt the infant identified through PARTICULARS WITHHELD and be allowed to travel and live with the Applicants DS AND OS in the Republic of Switzerland.

The application was allowed and prayers granted as prayed. The whole procedure was irregular and the orders granted thus null and void. It is only the High Court, which has jurisdiction under s.73 and 154(1) of the Children’s Act 2001, to make adoption orders. Furthermore Adoption Act under which the said application was purportedly made and orders given is no longer in existence having been repealed when the Children’s Act came into effect on 1st March 2002.

Thus the magistrate making the said orders had no jurisdiction and the proceedings were brought under non-existent law. The orders were therefore illegal, null and void. In the circumstances the proceedings and adoption orders made are hereby quashed.

The adoption orders be removed from the Adopted Child Registrar, forthwith.

It is so ordered.

**Dated, signed and delivered on 28th May 2004.**

**KABURU BAUNI**

**JUDGE**

**28/5/2004**