



**REPUBLIC OF KENYA**

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

**FAMILY DIVISION**

**ADOPTION CAUSE NO. 67 OF 2018**

**IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001**

**AND**

**IN THE ADOPTION OF P D M (SUBJECT)**

**M M P.....1<sup>ST</sup> APPLICANT**

**B M P.....2<sup>ND</sup> APPLICANT**

**JUDGMENT**

1. M M P and his wife B M P (herein referred to as the applicants) have come to court through an Originating Summons dated 29<sup>th</sup> May 2018 and filed on 31<sup>st</sup> 2018 pursuant to Sections 170 and 176 of the Children Act No. 8 of 2001, Order 37 of the Civil Procedure rules and Section 3A of the Civil Procedure Act seeking orders as follows:

**(1) That the Adoption Deed entered on 2<sup>nd</sup> April 2004 at the office of the Registrar of Anand, India pertaining to the above named subject be adopted as an order of this honourable court.**

**(2) That the Adoption Order made by this honourable court be entered into the Adopted Children Register.**

2. The application is predicated upon a supporting affidavit sworn by the 1<sup>st</sup> Applicant with the consent of the 2<sup>nd</sup> Applicant. The Applicants who are Kenyan citizens as evidenced by their respective passports marked Exh. 1 averred that sometime on 2<sup>nd</sup> April 2004, they adopted a minor by the name of P D M then aged 10 years.

3. That the adoption was conducted in Anand, India upon performing requisite Hindu religious and customary ceremonies culminating to the issuance of an adoption deed marked Exhibit No. 2. Subsequently, they moved to Kenya together with the minor and have since been staying together.

4. It is the Applicants' contention that for their adopted son to be granted Kenyan citizenship by the immigration department, the Adoption Deed in question must be adopted as an order of this court for it to acquire legal validity. That it is in the best interest of the family and their son to acquire Kenyan citizenship as this is the only place he knows as his home.

5. I have carefully considered the application herein, supporting affidavit and oral submissions by counsel for the Applicants who basically adopted the contents contained in the affidavit in support of the application. The only issue for determination is whether the adoption deed meets the threshold of adoption in accordance with the applicable Kenyan laws.

6. The law governing adoption of foreign adoption is Section 176 of the Children' Act Cap 141 Laws of Kenya. Section 176 (1) provides thus –

**“where a person has been adopted (where before or after the commencement of this Act) in any place and the adoption is one which this section applies, then, for the purposes of this Act and all other written laws, the adoption shall have the same effect as an adoption validly made under this Act, and shall have no other effect.**

Sub Section (2) – Sub Section (1) shall apply to an adoption in any place outside Kenya, if-

**(a) The adoption order was made by any court of law in the commonwealth and any court of competent jurisdiction in any other county.**

**(b) ....**

**(c) ....**

**Sub Section (3) – An adoption order made overseas in favour of an adopter who is resident in Kenya shall be lodged in court within the period and in the manner specified by the rules made by the Chief Justice.**

7. Ordinarily, an Adoption Deed is in itself a court decree which would be recognized, resealed and therefore enforceable as a foreign judgment under the foreign judgments reciprocal Act Cap 43 Laws of Kenya. However, with regard to adoption of Adoption Deeds (orders) from foreign countries, Section 176 of the Children's Act automatically does by pass the requirements under the foreign judgments and reciprocal Act Cap 43 by providing its independent requirements.

8. Courts in Kenya have over time adopted Adoption Deeds awarded in Common Wealth countries or any other court of competent jurisdiction under section 176(2) of the Children Act without reference to the foreign Judgments and reciprocal Act **(see in the ARD (Issue) (2017) eKLR and in the SSB (Child) (2017) eKLR.**

9. I have perused the Adoption Deed herein which was issued in accordance with Hindu Religious and Customary practices at Anand, India. The same reveals a stamp impression of an official referred to as the Registrar. There is no indication anywhere to suggest that it was issued and recorded by any court in India. It is not clear whether the Registrar is an official of Hindu Religion or of what institution.

10. Section 16 of the Indian Hindu Adoption and maintenance Act, 1956 provides as follows:

**“whenever any document registered under any law for the time being in force is produced before any court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved”.**

11. However, in this case, the Applicants have not discharged their onerous duty in proving that the Adoption Deed in issue is a product of any court from India duly recorded in accordance with section 16 quoted above. I believe the requirement under Section 176 (2) regarding the adoption of foreign adoption orders recognized by courts of origin is to preserve the integrity and credibility of court orders which must conform to our own laws.

12. The Applicants having failed to prove that the adoption order presented before court emanates from a court of law in India being a common wealth country or any other court of competent jurisdiction. Consequently, I have no choice but to dismiss the originating summons.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 12<sup>TH</sup> DAY OF OCTOBER, 2018.**

**J.N. ONYIEGO**

**JUDGE**