

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO.287 OF 2015

IN THE MATTER OF THE CHILDREN ACT NUMBER 8 OF 2001

AND

IN THE MATTER OF AN ADOPTION OF BABY SJM

BY

E N.....APPLICANT

RULING

1. The application coming for consideration is the notice of motion dated 15th November 2016. The applicant seeks orders that the applicant's husband's presence during the hearing of this matter be dispensed with.

- i. The matter be given earliest date possible.
- ii. The cost of the application be provided for.
- iii. The honorable court grant any further orders as it deem fit.

2. The matter is coming up for hearing of the Originating Summons application dated 23rd November 2015 before Hon. R.E. Ougo but the honorable judge had given directions for the applicant's husband to appear in order to give oral evidence before the court and be interviewed by KKPI Adoption society, Children Services and Guardian Ad litem. The applicant's husband lives in the UK and only took 2 days off from 26th to 28th October to travel to Kenya for the purpose of being interviewed by KKIP Adoption Society, Children services and Guardian ad Litem. After the said interviews the applicant's husband returned to the united Kingdom due to the nature of his job that if the matter is not heard urgently the minor will be denied his best interest as the applicant's husband will not be able to come to the country for the sole purpose of attending court to give evidence. Adding that unless the court intervenes as prayed the minor and applicant will be gravely prejudiced and will suffer irreparable loss and damage.

3. The applicant herein and the husband reside in Norwich in UK. The child subject to these proceedings will definitely move to the UK. Following the concerns raised by the Kenyan Government on inter country adoptions and the Moratorium issued by the Kenyan Government in regards to the same the court has to be extra cautious in adoption proceedings to rule out instances of any international adoptions which might be guised as local adoption. Section 83 (2) of the Children's Act provides that, "*where a custody order is made giving custody of a child to one party to a marriage, or in the case of joint guardians to one guardian, or in the case of a child born out of wedlock to one of the parents, the court may order that the person not awarded custody shall nevertheless have all or any rights and duties in relation to a child, other than the right of possession, jointly with the person who is given custody of the child.*"

4. I have read the affidavit in support of this application the same expresses that the applicant's husband is unable to attend these proceedings as at the said time he had to work and had exhausted his leave days. I believe we are in a new year and the applicant's husband has an opportunity to take leave to attend these proceedings. I believe it is crucial to obtain the applicant's testimony to enable this court to make a decision on the application for adoption. This court main aim is to ensure to protect the child and the child's best interest. The applicant's application is dismissed with no orders as to cost. It is so ordered.

Dated, Signed and delivered this 7th Day of April 2017.

R. E OUGO

JUDGE

In the presence of:

Mr. Mwai holding brief for Mr. Kawamara For the Applicant

Ms. Charity Court Clerk