



**REPUBLIC OF KENYA**

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

**MISCELLANEOUS CAUSE NO. 86 OF 2013**

**IN THE MATTER OF THE CHILDREN ACT, 2001**

**AND**

**IN THE MATTER OF A K P- MINOR**

**K V P.....1<sup>ST</sup> APPLICANT**

**K K P.....2<sup>ND</sup> APPLICANT**

**RULING**

The applicants K V P and K K P have filed an application by way of ex parte summons dated 20<sup>th</sup> September 2013. The application is taken out under the provisions of **Sections 165 and 176 (1), (2) and (3) of the Children's Act, 2001 and Section 3A of the Civil Procedure Act**. The applicants seek from this court an order for registration of an adoption order issued on 26<sup>th</sup> December, 2008 in Gujarat, India by way of a deed of adoption. The said adoption order concerns the adoption of the minor A K H by the applicants. The application is accompanied by a supporting affidavit sworn by the 1st applicant. In the affidavit, it is deposed that the minor was born in India on 18th August, 2003 to the 2<sup>nd</sup> applicant's brother A M H who died on 9<sup>th</sup> November, 2005 and his wife K A H. After the death of the minor's father, the minor's mother remarried. It was deposed that the minor's biological mother left the minor under the guardianship of his elderly paternal grandparents. As per the annexed deed of adoption dated 26<sup>th</sup> December, 2008 it was declared that the applicants would adopt the minor. The minor's grandparents and the applicants took part in a religious adoption ceremony upon which a deed of adoption was executed and was registered under the **Hindu Adoptions and Maintenance Act, 1956** in Bhuj-Kutch, India. The minor subsequently travelled to Kenya with his adoptive parents. The applicants being citizens of Kenya now want the minor to be granted Kenyan citizenship.

The procedure for recognition of overseas adoptions is provided under **Section 176 of the Children's Act** as follows;

1. *Where a person has been adopted (whether before or after the commencement of this Act) in any place and the adoption is one to 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 order validly made under this Act, and shall have no other effect.*
2. *Subsection (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 in any court of competent jurisdiction in any other country;*

*(b) in consequence of the adoption, according to the law of that country, a right superior to that of any natural parent of the adopted person in respect of the custody of the person; and*

*(c) in consequence of the adoption, the adopter had, immediately following the adoption, according to the law of that country, a right superior or equal to that of any natural parent in respect of any property of the adopted person which was capable of passing to the*

*parent or any property of the person dying intestate without other next of kin, and domiciled in that place where the adoption was made and a national of that country which has jurisdiction in respect of their place, but not otherwise.*

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

The applicants are therefore required to satisfy the conditions in **Section 176(2)** of the **Act**. Therefore, before this court makes a determination as to the recognition afforded to the adoption order registered on 26<sup>th</sup> December, 2008 in Bhuj-Kutch, India, I must first consider the question as to whether the adoption order is valid. Second, whether an adoption order made in the foreign state is for the relevant purposes exactly the same in its consequence as an adoption order made under the **Children's Act, 2001**. Dealing with the first question, the law of the country of adoption determines the validity of the adoption. Traditionally, under the **Hindu Adoptions and Maintenance Act, 1956** adoption by deed is available in India to among others Hindus. **Section 16** of the **Act** creates a presumption that an adoption on the basis of a registered document of adoption has been made in compliance with the Act and that the necessary ceremonies have been performed. Adoptions recognized under the Act are furthermore considered irrevocable. Looking at the deed of adoption presented, I am satisfied that it was registered in India and is therefore a valid adoption. In considering the second test, I am also satisfied that adoption under the **Hindu Adoption and Maintenance Act (1956)** adoption has a similar effect as an adoption under the **Children's Act, 2001** thereby satisfying the second test.

In the premises therefore, the application is allowed as prayed. The adoption deed dated 26<sup>th</sup> December, 2008 concerning the adoption of the minor A K H henceforth called A K P by the applicants K V P and K K P be and is hereby registered. It is so ordered.

**DATED AT NAIROBI THIS 2ND DAY OF DECEMBER , 2014**

**M. MUIGAI**

**JUDGE**