



**In re TN alias TNG (Minor) (Adoption Cause 1A of 2021)
[2025] KEHC 1321 (KLR) (Family) (25 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1321 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE 1A OF 2021
EKO OGOLA, J
FEBRUARY 25, 2025
IN THE MATTER OF ADOPTION OF TN ALIAS TNG (MINOR)**

BETWEEN

DWM APPLICANT

AND

ATTORNEY GENERAL RESPONDENT

RULING

1. The applicant filed Originating Summons dated 27th October 2021 seeking orders of adoption/ recognizing of foreign orders in regards to an Adoption Order issued by the Superior Court of the State of Arizona in the United States of America on 10th June 2021.
2. In opposition to the Originating Summons, the Attorney General filed a Notice of Preliminary Objection dated 21st May 2024 where they averred that the Originating Summons violated the provisions of Sections 2(1), 3(3)(e), and 13(1) of the [Foreign Judgments \(Reciprocal Enforcement\) Act](#), Section 5 of the [Oaths and Statutory Declarations Act](#), and Section 185 of the [Children's Act](#).
3. The Originating Summons and the Notice of Preliminary Objection was canvassed by way of submissions which I have duly considered.

Determination

4. The issue for determination is whether this court can enforce a judgment from a court in the United States of America.
5. The [Foreign Judgments \(Reciprocal Enforcement\) Act](#), Cap 43, Laws of Kenya is the primary law on the enforcement of foreign judgments in Kenya. In its preamble, it provides that the enforcement of



foreign judgments is subject to the principle of reciprocity. Kenya grants reciprocal treatment only to judgments emanating from courts of countries that accord reciprocal treatment to Kenyan judgments.

6. The impugned foreign court order was an order relating to the applicant adopting a minor. Section 3 of the [Foreign Judgments \(Reciprocal Enforcement\) Act](#) provides for the judgments to which the Act applies. Adoption judgments are not included as judgments that the Act applies to.
7. Since this matter was filed in 2021, the prevailing law on adoption was the [Children's Act](#), of 2001. Section 176 of the Act provided a mechanism for the recognition and enforcement of foreign adoption decrees outside the provisions of the [Foreign Judgments \(Reciprocal Enforcement\) Act](#). In essence, therefore, a person seeking to enforce a foreign adoption decree has an alternative to the provisions of the [Foreign Judgments \(Reciprocal Enforcement\) Act](#).
8. Section 176 of the [Children Act](#), 2001 which dwells on the effect of overseas adoptions, provides 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 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 the country which had jurisdiction in respect of that place, but not otherwise.
 - (3) An adoption order 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.”
9. A foreign adoption decree can therefore be adopted in Kenya through Section 176 of the [Children Act](#), 2001 without recourse to the [Foreign Judgments \(Reciprocal Enforcement\) Act](#).
10. I have looked at the Order of Adoption dated 10th June 2021, and I am satisfied that the adoption was approved by the local court, that is, the Superior Court of the State of Arizona, and it is a valid adoption in the United States of America.



11. Furthermore and more importantly, this court takes cognizance of Article 16 of the Constitution which states as follows:-

“ A citizen by birth does not lose citizenship by acquiring the citizenship of another country.”

12. The upshot is that I dismiss the Notice of Preliminary Objection dated 21st May 2024. The Originating Summons dated 27th October 2021 is allowed. The Order of Adoption dated 10th June 2021 from the Superior Court of the State of Arizona in the United States of America is hereby recognized by this court to have the same effect as an Adoption Order under the Children’s Act and any other Laws of Kenya.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25TH DAY OF FEBRUARY 2025

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E.K. OGOLA

JUDGE

In the presence of:

Mr. Mutua h/b for Wachira for the Applicant

N/A For the Respondent

Ms Gisiele M court Assistant

