

# Requirements and Process of Adoption in Kenya



Adoption is the legal process by which a person obtains parental rights over a child. The Children Act No. 8 of 2001 (the Act) and the Hague Adoption Convention, which Kenya is a signatory to, govern adoptions in Kenya. Adoption can be classified into three categories. i.e.

- i. **International/ Inter country adoption**, which relates to applicants who are non-Kenyan citizens, seeking to adopt a child from Kenya. There is however an indefinite moratorium on inter country adoption of Kenyan Children by foreigners since 27<sup>th</sup> November 2014.
- ii. **Local adoption**, which refers to adoption of Kenyan children within Kenya by Kenyan Applicants
- iii. **Kinship adoption**, which refers to adoptions by applicants who are relatives of the child.

## Preliminaries

Under the Act, any child who is resident within Kenya is eligible for adoption, whether or not the child is a Kenyan citizen, and whether it was born in Kenya or not. The child has to be at least six weeks old and has to be declared free for adoption by a registered adoption society.

Before making an application for an adoption order, the child to be adopted must have been in the continuous care and control of the applicant in Kenya for a period of three consecutive months preceding the filing of the application. Both the child and applicant(s) must also be evaluated and assessed by a registered adoption society in Kenya.

An application can be made either by a sole applicant or jointly by two spouses. The applicant or at least one of the joint applicants must satisfy the following conditions:

- i. Be at least twenty five years old
- ii. Be at least twenty one years older than the child
- iii. Not have attained the age of sixty-five years
- iv. Be a relative of the child or parent of the child.

Certain categories of persons are also exempted from having adoption orders made in their favour, unless the court is satisfied that there are special circumstances that justify the making of an adoption order in their favour. These include:

- i. A sole male applicant in respect of a female child;
- ii. A sole female applicant in respect of a male child;
- iii. An applicant or joint applicants who has or both have attained the age of sixty-five years
- iv. A sole foreign female applicant.
- v. Persons of unsound mind within the meaning of the Mental Health Act (Cap. 248);
- vi. Persons charged and convicted by a court of competent jurisdiction for any of the offences set out in the Third Schedule of the Act or similar offences. These include offences against children and offences involving bodily harm.
- vii. Homosexuals

- viii. In the case of joint applicants, if they are not married to each other;
- ix. A sole foreign male applicant

A sole applicant or joint applicants who have satisfied the conditions above must first approach a registered adoption society. The society will then assess the applicants and conduct a home visit to ascertain their living conditions and their suitability as parents. The society also conducts checks to ensure that the child is free to be adopted. If the society is satisfied after conducting the necessary checks on the applicants, it will match the applicants with the child and declare the child free for adoption. The society can then place the child under the care of the applicant(s) for a period of not less than three months after which the applicants can file an application in court.

## Application to court

The application is presented at the court registry and a hearing date set. The applicant(s) may be required to provide information relating to the child and themselves. This may include copies of documents such as the child's birth certificate, a copy of the school progress report if the child is a school going child, a children officer's report, death certificate if the child's parents are deceased, copies of identification documentation of the applicants, marriage certificate for joint applicants, applicants' medical reports, financial statements, proof of home ownership, birth certificates of the applicants' other children, and certificates of good conduct. The applicants may also propose a suitable **guardian ad litem** to the court. A guardian ad litem in adoption proceedings is an independent person whom the court appoints to safeguard the interests of the child during the adoption proceedings.

Applications must also to be accompanied by written consents, which vary depending on the circumstances of the child. These consents are as listed below:

- i. **Consent of every person who is a parent or guardian of the child;**
- ii. **Consent of the parents or guardian of the child's mother** – in the case of a child born out of wedlock whose mother is also a child.
- iii. **Consent of the father** - in the case of a child born out of wedlock whose father has acquired parental responsibility in respect of the child;
- iv. **Consent of the other spouse** – in case only one of the spouses is making the application.

- v. **Consent of the court of competent jurisdiction or of a government authority situated in the country where both or one of the spouses is ordinarily resident, permitting the spouses to adopt a foreign child** - in the case of two spouses who are not Kenyan citizens and who are not resident in Kenya
- vi. **Consent of the child** - in the case of a child who has attained the age of 14 years

All adoption proceedings are to be heard and determined in chambers and the identity of the child and the applicants must be kept confidential. Once the application is placed before the court, the court appoints a guardian ad litem either on its own motion or by application of the applicants, pending the hearing and determination of the adoption application. The duty of the guardian ad litem is to safeguard the interests of the child pending the determination of the adoption proceedings, investigate and apprise the court as to the circumstances pertinent to the adoption of the child, make recommendations as to the propriety of making any interim orders or an adoption order in respect of the child, intervene on behalf of the child and arrange for the care of the child in the event of the withdrawal of any consent listed above and undertake such duties as the court may from time to time direct. Unless the court extends the period of the appointment, the appointment of a guardian ad litem expires once the court makes its final order.

Once the court hears and determines the application, it could either grant or deny an adoption order. If an adoption order is granted, the court directs the Registrar-General to make an entry in the Adopted Children Register in the prescribed form. The effect of an adoption order is that all rights, duties, obligations and liabilities relating to the child are transferred to the applicants, as if the child were their biological child.



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