

Recognition of Overseas Adoptions in Kenya



Under Section 176 of the Children Act, foreign adoptions can be recognized in Kenya. Foreign adoption orders have the same effect as adoption orders validly made in Kenya.

However, an overseas adoption has to meet any of the following conditions for it to be validly accepted in Kenya:

- i. If the adoption order is made by any court of law in the Commonwealth and any court of competent jurisdiction in any other country;

- ii. If according to the law of that country, the adopter acquired a superior right of custody over the child compared to the natural parent as a result of the adoption
- iii. If according to the law of that country, the adopter acquired a superior or equal right to that of a natural parent immediately after adoption, in respect of any property of the adopted person and the property was capable of passing to the parent where there is no next of kin.

If the adoption is made outside Kenya and the adopter is resident in Kenya, the foreign order is to be lodged in the court within the period and in the manner specified by the rules made by the Chief Justice. Currently there are no rules to this effect and such applications are solely governed by Section 176 of the Children Act and Section 9 of the Civil Procedure Act, which provides for the recognition of foreign judgments.

Important to note is that the children court does not have the jurisdiction to order that a child adopted outside Kenya be automatically granted Kenyan citizenship. Consequently, the adoptive parents ought to apply for the child's citizenship upon recognition of the foreign adoption order. The adoptive parents are required to provide the following documents while applying for the child's citizenship:

- i. Proof of the Kenyan citizenship of the adopting parent;
- ii. A valid adoption certificate issued in a whose orders, decrees are recognised in Kenya; and
- iii. Proof of lawful residence of the child in Kenya