

CHILD ADOPTION IN KENYA

A. Legislation

The Children Act No. 8 of 2001 under part XII makes provisions for Adoption. The Children (ADOPTION) Regulations, 2005, Gazetted on 20th May 2005 also provide the guidelines on the adoption process.

The purpose of the regulations is to give effect to the Act by making provisions for the appointment of authorities to carry out obligations under the Act and provide for regulation of Kenyan Adoption Orders.

The regulations, which first and foremost consider the best interests of the child to be paramount, seek, among other things:

1. To be friendly and accessible
2. To make the process transparent, simple and user friendly
3. To define the role of the government and adoption societies.

The jurisdiction for making adoption Orders rests strictly with the High Court.

The adoption Secretariat that meets monthly manages and regulates matters of adoption in Kenya.

B. The Adoption Process

Adoption Orders are issued by the High Court of Kenya only, and not any lower court. Once issued, the order is served on the Registrar-General (Marriages and Adoptions Office) for entry into the Adopted Children's Register and issuance of the Adoption Certificate.

The Adoption Order must be accompanied by the original birth certificate of the child. In the case of abandoned babies, for whom no birth certificate is issued, documents from relevant authorities proving that the child was abandoned must accompany the Adoption Order. These may include a police report, Children's Department report and a letter from the children's home or hospital that held the abandoned baby. The fee payable for the certificate is Kshs. 100. 00

The Registrar's Office then confirms the authenticity of the documents from court and liaises with the Registrar of Births and Deaths to have that birth entry marked 'ADOPTED'.

The Adoption is entered into the Adopted Children's Register and an Adoption Certificate issued. Children's Register and an Adoption Certificate

An adoption order has the effect of transferring all rights, duties and responsibilities over a child to the adopter as if the child was born to

the adopter inside a lawful marriage. It extinguishes the rights, duties, responsibilities that a parent, guardian or anyone having parental responsibility before the order was made.

The court process therefore entails:

- ✓ Appointment of *Guardian ad Litem*
- ✓ Hearing
- ✓ Assessment Reports
- ✓ Final adoption orders
- ✓ Issuance of adoption certificate by registrar General

C. Main Steps in Adoption

1. Assessment of prospective adoptive parents by an adoption society.
2. Declaration of a child proposed as free for adoption by an adoption society
3. Placement of child with applicants
4. Three months mandatory bonding period within the Republic of Kenya prior to filing matter before court.

D. Consent in Adoption

Consent before any adoption is effected, is required;

1. From parents, guardians or any person having parental responsibility over a child to be adopted
2. For people not resident in Kenya, the consent of their courts or competent Government Authority.
3. The consent of a child who has attained the age of 14

Consents can be dispensed with in the case of parents or guardians who have abandoned or neglected their children, or cannot be found, unnecessarily withhold the consent or spouses separated permanently.

E. Persons Not Allowed to Adopt

The following are prohibited by law from adopting a child in Kenya:

1. A person who is not of sound mind
2. A person who has been charged or convicted previously of child abuse offence; or is a homo sexual
3. An applicant or joint applicants who are not married to each other
4. A sole foreign male applicant

F. International Adoptions

Kenya has not ratified the Hague inter-country adoption convention. It has, however, domesticated its provisions by passing the Children's Act 2001. Procedures under this Act and the Children's Adoption Regulations and court rules are mandatory for any person who desires to make an application for adoption.

Any applicant interested in adopting a Kenyan child must come through an approved adoption society in Kenya. It is these approved adoption societies that make an application on behalf of applicants wishing to adopt a Kenyan child. There are three approved adoption societies:

1. Little Angels Network
2. Kenya Christian Homes
3. Child Welfare Society of Kenya (Head Office)

International adoptions can be conducted in respect of a child upon the application of two spouses who are not Kenyans and who are not in Kenya provided that legal requirements to that effect are met.

International adoptions are processed through an approved foreign adoption agency in conjunction with an approved Kenyan adoption society to make international adoption arrangements.

For a society to be recognized as conducting inter-country adoption between Kenya and the UK, it must be duly registered and recognized under the laws of the UK. The society must also be recognized to conduct inter-country adoption in Kenya.

The society must submit a request through an approved adoption society in Kenya. It must submit all the relevant supportive documents to the adoption committee in charge of adoption matters in Kenya upon payment of the required application fees.

Note: The law prohibits the advertisement of a child for adoption.

See also www.attorney-general.go.ke