



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

Misc. Application No. 109 Of 2013

IN THE MATTER OF FOREIGN JUDGMENTS (RECIPROCAL ENFORCEMENT) ACT, CAP 43
LAWS OF KENYA

IN THE MATTER OF THE ORDER OF THE HIGH COURT OF JUSTICE OF 23RD MAY, 2013

IN THE MATTER OF I W P (INFANT)

IN THE MATTER OF SECTIONS 4, 22 & 113 OF THE CHILDREN ACT, 2001

B E.....EX-PARTE APPLICANT

Ruling

1. This application is by summons dated 22nd October, 2013 and is taken out under Foreign Judgments (Reciprocal Enforcement) Act, Cap 43 Laws of Kenya. The Applicant seeks from Court Orders that:-
 1.(Spent)
 2. That the Honourable Court be pleased to register the orders of the High Court of Justice, Family Division made on 23rd May, 2013.
 3. That further or other orders be granted so as to effect the orders of the High Court of Justice, Family Division made on 23rd May, 2013.
2. The application is supported by the annexed affidavit of B E, the Applicant herein, sworn on 22nd October 2013. In that affidavit, she depones that her daughter A T is the mother of the said I W P (infant), that both the mother and father of the infant are resident in the United Kingdom, and that both the mother and father of the infant have been litigating in court over and concerning the infant vide Children Case No. FD11P00934. Further, she avers that the said parties have consented to having the said child visit me accompanied by her mother in Kenya on condition that an application is made to adopt the order made in the High Court of Justice, Family Division United Kingdom. It is her averment that she is also bound by the said order of the Court of Justice, United Kingdom since she had been made a party thereto for purposes of enforcement of the order whilst the child is in Kenya.
3. The application is *exparte*.
4. I have seen the said Order made in the High Court of Justice, Family Division United Kingdom by the Hon. Mr. Justice Bodey on 20th May, 2013. Reference is made to paragraph 4 of the said order which reads thus:

‘I shall reside with the First Respondent Mother A E.’

5. Further, paragraph 6 of the said order reads as follows:

‘The Applicant Father and the First Respondent Mother are to make I available for contact with the Second Respondent Maternal Grandmother in Kenya for purpose of contact with the extended family there and for that purpose permission is given to the parties for I to leave the jurisdiction during the summer holidays, Christmas and Easter periods.’

6. It is indeed, important to likewise make further reference to paragraph 11 of the said order which is fundamental to this application and it reads thus:

‘Before any contact takes place in Kenya, mirror orders are to be in place, and the costs associated with this are to be paid for by the maternal family.’

7. The Applicant herein approached the Court under the Foreign Judgments (Reciprocal Enforcement) Act, Cap 43 of the Laws of Kenya, which makes provision for enforcement of judgments given in countries outside Kenya which accord reciprocal treatment to judgments given in Kenya. The said orders which relate to the instant application were made by the High Court of Justice, Family Division in the United Kingdom. It is therefore essential to declared forthwith that the United Kingdom is a reciprocating country under the Schedule to the Foreign Judgments (Reciprocal Enforcement) (Extension of Act) Order.

8. Indeed this court is also guided by the provisions of Article 53(2) of the Constitution which provides thus:

‘A child’s best interests are of paramount importance in every matter concerning the child.’

9. In the Applicant’s affidavit at paragraph 4, she avers that both the mother and father of the infant have been litigating in court over and concerning the infant. I am satisfied that the said orders were given in the best interests of the said infant.

10. In view of the foregoing, I am satisfied that the application is merited and is accordingly allowed. I therefore, order that the orders of the High Court of Justice, Family Division, United Kingdom made on 23rd May, 2013 be and is hereby registered.

DATED, SIGNED and DELIVERED at NAIROBI this 23rd DAY OF December, 2013.

W. M. MUSYOKA

JUDGE