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SECTION 38-THE ADOPTION RULES

Rules by the High Court Government Notices
236 of 1956
497 of 1964

1. These Rules may be cited as the Adoption Rules.

2. In these Rules, unless the context otherwise requires

"the Court" means the High Court or, as the case may be, a subordinate court of the first class sitting as a juvenile court, and having jurisdiction under section ten of the Act;

"the infant" means the child proposed for adoption;

"the petitioner" means the person or persons applying for the adoption.

3. An application to the High Court or to a subordinate court for an adoption order shall be made by a petition in Forms 1 and 2 respectively in the First Schedule.Application

4. If in the case of an application to a subordinate court it appears that the petitioner has previously made an application for an adoption order in respect of the same infant to any court other than a subordinate court, the Court shall not entertain the appeal; and if it appears that the petitioner has previously made an application for such an order to a subordinate court, the Court shall not entertain the application unless it is satisfied that there has been a substantial change in the circumstances since the previous application.Previous application to subordinate court

5. If it appears to the High Court that the petitioner has previously made an application for an adoption order in respect of the same infant to the High Court, the application shall not be proceeded with unless the Judge is satisfied that there has been a substantial change in the circumstances since the previous application.Previous application to High Court

6. If any person proposing to apply to the High Court or subordinate court for an adoption order desires that his identity should be kept confidential he may, before filing a petition, apply to the Registrar of the High Court or clerk of the court, as the case may be, for a serial number to be assigned to him for the purposes of the proposed petition, and the Registrar or clerk of the court shall assign such a number to him accordingly.Serial number

7. Unless it appears from the petition or is otherwise shown to the satisfaction of the Court, that the petitioner does not desire that his identity should be kept confidential, the proceedings shall be conducted with a view to securing that he is not seen by or made known to any individual being a respondent to the proceedings (other than the infant or the spouse of the

petitioner); and in particular the Court shall direct that the petitioner (unless his attendance is dispensed with under rule 18) shall attend and be heard and examined separately and apart from any such respondent. Safe-guarding identity of applicant

8. The petition shall be served on-

- (a) the parent or parents of the infant;
- (b) the guardian or guardians of the infant;
- (c) the person or persons having the actual custody of the infant; and
- (d) the person or persons liable to contribute to the support of the infant;

but the Court may in its discretion dispense with service on any of those persons, and may in its discretion order the petition to be served on any other person. Who are to be served

9. Every consent required under section four of the Act shall be in writing and shall be in accordance with the form of consent as set out in Form 3 in the First Schedule and shall be attested by a magistrate. Consents in writing

10. Every petition, notice or other document required to be served by these Rules shall be served by being posted in a prepaid registered envelope addressed to the person to be served, unless the Court otherwise directs, and shall, at the expiration of such period of time as may to the Court seem proper from the time of posting, be deemed to have been served, unless the contrary appears. The service of every petition, notice or other document not served by the Court shall be verified by affidavit, unless the Court otherwise directs. Mode of service

11. The petition shall, as to all its paragraphs, be verified by affidavit and there shall be annexed to the affidavit all certificates, consents and other documents necessary for proving the averments in the petition. Verification by affidavit

12. The infant shall be a respondent to the petition and, as soon as practicable after the filing of the petition, the Court shall appoint a guardian ad litem to the infant and the Court shall thereupon cause the petition and all documents annexed thereto to be served on the guardian ad litem. Guardian ad litem

13. When a guardian ad litem has been appointed, the Court shall appoint a day for the hearing of the petition and shall give notice to all parties, including the guardian ad litem, of the day so appointed. The notice shall be served not less than seven clear days before the day appointed for the hearing and shall be in accordance with Form 4 in the First Schedule. Notice of hearing

14. All documents filed in the Court shall be confidential and shall be kept secret by the Court. Every petition and every application shall be heard and determined in camera. Secrecy

15. No copy or duplicate of any order or any extract therefrom made by the Court shall be given to or served upon any person other than the petitioner and the Registrar-General, unless the Court otherwise directs. Restriction as to service of orders

16. (1) It shall be the duty of the guardian ad litem to investigate as fully as possible all the circumstances of the infant and the petitioner and all other matters relevant to the proposed adoption with a view to safeguarding the interests of the infant, and in particular it shall be his duty to include in his investigation the following questions: Duties of guardian ad litem

(a) whether the statements in the petition are true;

(b) whether any payment or other award in consideration of the adoption has been received or agreed upon, and whether it is consistent with the welfare of the infant;

(c) whether the means and status of the petitioner are such as to enable him to maintain and bring up the infant suitably, and what right to or interest in property the infant has;

(d) what insurance, if any, has been effected on the life of the infant;

(e) whether it is desirable for the welfare of the infant that the Court should be asked to make an interim order or to impose, in making an adoption order, any particular terms or conditions or to require the petitioner to make any particular provision for the infant.

(2) The guardian ad litem shall make inquiries as to all matters alleged in the petition and as to the Additional Matters specified in the Second Schedule and report to the Court upon them. It shall also be his duty to attend the Court whenever required for the purpose and on the hearing of the petition.

17. The guardian ad litem, and, where a body of persons is appointed guardian ad litem, any officer or agent of that body, shall regard all information obtained in the course of the investigation or otherwise in relation to the matter as confidential and shall not divulge any part of it to any person save as may be necessary for the proper execution of his duty. Information to be confidential

18. The Court may refuse to make an adoption order or an interim order unless all parties, including the infant, attend before the Court, but it shall have power in its discretion to dispense with the attendance of any party, including the infant; and the Court may direct that any of the parties shall attend separately and apart from the others, or that any party, including the infant, shall be interviewed privately by the Court or its officers. Presence of parties

19. If, owing to special circumstances, an application appears to a subordinate court to be more fit to be dealt with by the High Court, it may on that ground expressly refuse to make an order, and shall transmit the petition together with all other documents relating to the application to the High Court, and the High Court may proceed to hear and determine the application as if the application had been commenced before the High Court. Cases more fit for the High Court

20. An interim order may provide for the supervision of the infant by the guardian ad litem or otherwise as the Court may think fit. Supervision of infant

21. Where the determination of an application is postponed and an interim order made, the petitioner shall, at least thirty days before the expiration of the date specified in the interim order, apply for the final determination of

the application. The Court shall thereupon fix a time for the further hearing of the application and issue to every respondent a notice in Form 7 in the First Schedule. Notice of further hearing

22. The Registrar of the High Court or a clerk of the court of a subordinate court shall be the prescribed officer for the purpose of subsection (5) of section twelve of the Act, and, upon the making of an adoption order, the prescribed officer shall forward a sealed copy thereof together with a copy of the petition to the Registrar-General in a registered, postal envelope marked "confidential". Prescribed officer

23. The Court may make such orders as to costs as it shall think fit and may direct the costs to be taxed according to such one of the scale of costs applicable to actions in the High Court or subordinate court, as the case may be, as the Judge or magistrate shall determine. The Court may direct that all the costs of an application under the Act shall be borne and paid by the petitioner. Costs

24. The Court shall keep in a place of special security all documents whatsoever relating to any application or order made under the Act. Safe custody of documents

25. Subject to these Rules, the High Court Rules and the Subordinate Courts (Civil Jurisdiction) Rules respectively shall apply to proceedings under the Act so far as they are applicable. Procedure governing applications.

Cap. 27

Cap. 28

26. Subject to these Rules, the fees to be taken and charged in respect of proceedings under the Act, and the costs, witnesses' expenses and travelling allowances to be allowed in such proceedings shall be, so far as may be applicable, the same as those prescribed for the time being by the High Court Rules and the Subordinate Courts (Civil Jurisdiction) Rules respectively. Fees, costs and allowances

Cap. 27

Cap. 28

27. Forms 5 and 6 respectively in the First Schedule shall be used in making an adoption order and an interim order respectively. Adoption and interim orders

28. The forms in the First Schedule shall be used with such variations as the circumstances may require. Forms may be varied

FIRST SCHEDULE

PRESCRIBED FORMS

FORM 1

(Rule 3)

THE ADOPTION RULES

PETITION

In the High Court for Zambia.

In the matter of A.B.

..... an Infant

and

In the matter of the Adoption Act.

To: A Judge of the High Court.

The Petition of C.D.
of (and E.D.
..... (born)
his wife of the same address)

SHOWETH.-

1. Your Petitioner(s) is (are) desirous of adopting the said A.B.
..... under the
provisions of the Adoption Act.

2. Your Petitioner(s) is (are) resident at
.....
.....
.....

3. Your Petitioner C.D.
.....
is unmarried (was married to your Petitioner E.D.
.....
..... at on the
..... day of,
19.....).

4. Your Petitioner is by occupation a
.....
.....
.....

5. Your Petitioner C.D.
is years of age and your Petitioner E.D.
.....
..... is years of age.

6. Your Petitioner(s) has (have) resident with him (them) the following
persons,
namely
.....
.....
.....

7. Your Petitioner C.D. (E.D.
.....) is related to the said A.B.
.....
..... as follows
.....
..... (or, Your Petitioner(s) is not (are not nor is either of them) related to
the said A.B.).

8. The said A.B. is-

- (a) of the sex;
- (b) unmarried;
- (c) a child of and
..... both of
.....
- (d) resident in Zambia;
- (e) years of age, having been born on the
..... day of 19.....,
at.....
- (f) resident at
.....
.....
- (g) now in the actual custody of
..... of
.....
- (h) under the guardianship of
..... of
.....
- (i) is entitled to the following property,
namely.....
.....

9.
.....
of

.....
.....
(and of
.....) is (are) liable to
contribute to the support of the said A.B.
.....

10. The said A.B.
..... has not been
the subject of an adoption order or of an application or petition for an
adoption order save that (state order and application or petition, if any).

11. Your Petitioner(s) undertakes (undertake) if an order is made on
this Petition, to make for the said A.B.
..... the following
provision, namely
.....
.....
.....

Your Petitioner(s) will, if required, secure the above provision by bond or
otherwise as the Court may require.

12. Consents to the making of an adoption order have been obtained from
the following persons and are annexed hereto, namely:

- (a) (Parents)
- (b) (Guardian)
- (c) (Actual custodian of Infant)
- (d) (Person or persons liable to contribute to support of Infant)
- (e) (Spouse of Petitioner)

13. Your Petitioner(s) has not (have not has either of them) received
agreed to receive, and no person has made or given or agreed to make or give to
the Petitioner(s) (or either of them) any payment or reward in consideration of
the
adoption of the said A.B. (except as
follows, viz).

14. It is proposed that the costs of this Petition shall be provided for
as follows, namely:

15. Your Petitioner(s) notified the Commissioner for Juvenile Welfare of

his/her/their intention to apply for an adoption order in respect of the said A.B. on the day of, 19.....

16. Your Petitioner(s) desires that his/their identity shall be kept confidential (or does not desire that his/their identity should be kept confidential).

17. If an adoption order is made in pursuance of the Petition it is proposed that the said A.B should be known as

Your Petitioner(s) prays (pray)-

(i) That an order for the adoption of the said A.B..... by your Petitioner(s) may be made in pursuance of the Adoption Act with all necessary directions:

(ii) That the costs of this Petition may be provided for as above mentioned or otherwise as the Court may direct:

(iii) Such further or other order as the nature of the case may require.

AND Your Petitioner(s) will ever pray.

NOTE-It is intended to serve this Petition on

FORM 2

(Rule 3)

THE ADOPTION RULES

PETITION

In the Subordinate Court of the First Class

Holden at

In the matter of A.B an Infant

and

In the matter of the Adoption Act.

To: The Magistrate of the said Court.

(the same as in Form 1)

FORM 3

(Rule 6)

THE ADOPTION RULES

CONSENT TO ADOPTION ORDER

In the matter of a Petition by
of to the High Court
(or to the Subordinate Court of the First Class at)
for an order for the adoption of an Infant named

I, the undersigned,
of
.....
..... being-

- (a) the father of the Infant;
- (b) the mother of the Infant;
- (c) the guardian of the Infant;
- (d) a person liable to contribute to the maintenance of the Infant;
- (e) the person (acting on behalf of a body) having parental rights in respect of the Infant or liable to contribute to the maintenance of the Infant; or
- (f) the spouse of the Petitioner;

hereby state as follows:

(1) I understand that the effect of an adoption order is to deprive a parent or guardian of all rights in respect of the maintenance and upbringing of the Infant:

(2) I understand that when the Petition for an adoption order in respect of the said
A.B.
.....
..... is heard by the Judge (or Magistrate) this document may be used as evidence of my consent to the making of the order unless I have notified the Court that I no longer consent:

(3) I hereby consent to the making of an adoption order in pursuance of the said Petition (on condition that the religious persuasion in which the infant is brought up is
.....)
:

Signature

Signed at on the
by the said [who satisfied me
that she fully understands the nature of the foregoing statement and was
prepared to surrender her child for adoption].Delete words in square brackets
except where the consenting party is the mother of the infant.*

Before me (signature)

(Address)

Magistrate

* Delete words in square brackets except where the consenting party is the
mother of the infant.

FORM 4

(Rule 13)

THE ADOPTION RULES

FORM OF NOTICE OF DAY APPOINTED FOR HEARING

(Heading as in Petition)

To

.....
.. of

TAKE NOTICE that a Petition has been presented in the above matter praying that an order may be made for the adoption of the above-named . . . by of and that

.....
of has been appointed guardian ad litem to the said Infant, and that the said Petition will be heard at a Court to be held at on the day of, 19.....,at..... o'clock in the noon.

.....

Registrar of the High Court

or

Magistrate

FORM 5

(Rule 27)

THE ADOPTION RULES

ADOPTION ORDER IN RESPECT OF AN INFANT NAMED A.B.

(Hearing as in Petition)

UPON reading the Petition of
of (full address) .
(and of (born) his
wife)
(hereinafter called the Petitioner(s)) for an Order under the Adoption Act
authorising him/her/them to adopt
A.B.
an Infant the child/adopted child of .

AND the said A.B. (hereinafter
called the Infant) being of the sex and never having been married:

AND the Petitioner/one of Petitioners
having attained the age of twenty-five years and being at least twenty-one years
older than the Infant/having attained the age of twenty-one years and being a
relative of the Infant within the meaning of the said Act/being the
mother/father of the Infant:

[AND the names by which the Infant is to be known being
]

[AND it having been proved to the satisfaction of the Court that the Infant
is identical with
A.B.
to whom the entry numbered and made on the
..... day of , 19.....,
in the Register of Births relates]:

AND the (probable) date of the birth of the Infant appearing to be the
day of, 19....., born at
.....

[AND the infant having been previously the subject of an adoption order
dated the
day of, 19....., of which
particulars are entered in the Adopted Children Register]:

AND all the Consents required by the said Act being obtained or dispensed
with:

IT IS ORDERED that the Petitioner/Petitioners be authorised to adopt the
Infant:

(And the following payment or reward is sanctioned:
):

(And as regards costs it is ordered that
):

AND it is directed that the Registrar-General shall make in the Adopted Children Register an entry recording the adoption:

(And it is further directed that the Registrar-General shall cause the said entry in the Register of Births to be marked with the word "Adopted"):

(And it is further directed that the Registrar-General shall cause the previous entry in the Adopted Children Register relating to the Infant to be marked with the word "Re-adopted").

Dated this day of
19.....

Registrar of the High Court

or

Magistrate

FORM 6

(Rule 27)

THE ADOPTION RULES

INTERIM ORDER IN RESPECT OF AN INFANT NAMED A.B.

(Heading as in Petition)

UPON reading the Petition of, etc. (As in the Adoption Order, Form 5, down to and including the paragraph "And all the Consents required by the said Act being obtained or dispensed with").

IT IS ORDERED that the determination of the Application be postponed, and the custody of the Infant be given to the Petitioner(s) for a period ending on the day of 19....., by way of a probationary period, upon the following terms, namely:

.....
.....
..... and that the Petitioner(s) shall at least thirty days before that date, apply for the final determination of the Petition.

As regards costs it is ordered that.

Registrar of the High Court

or

Magistrate

FORM 7

(Rule 21)

THE ADOPTION RULES

NOTICE OF FURTHER HEARING OF AN APPLICATION FOR AN ADOPTION ORDER IN RESPECT OF AN INFANT NAMED A.B.

Whereas a Petition for an order under the Adoption Act, authorising the adoption of A.B. an Infant of the sex born on the . day of , 19....., was made by

AND WHEREAS of was appointed guardian ad litem of the said Infant:

AND WHEREAS the determination of the said Petition was postponed and an interim order was made by the Court holden aton the day of , 19.....:

TAKE NOTICE that the said Petition will be further heard before the Court holden at on the day of , 19....., at the hour of o'clock in the noon, and that you may appear to show cause why the adoption order should not be made.

Dated the day of , 19.....

Registrar of the High Court

or

Magistrate

SECOND SCHEDULE

THE ADOPTION RULES

(Rule 16)

ADDITIONAL MATTERS SUBJECT TO INVESTIGATION AND REPORT BY GUARDIAN AD LITEM

PART I

The Petitioner

1. In the case of a joint application, how long the persons concerned have been married.
2. In the case of an application by one only of two spouses-
 - (a) whether the other spouse consents to the application; and
 - (b) why he or she does not join in the application.
3. What other children (including adopted children) such persons have.
4. What is the age and sex of all children living in the home of those persons, and what is their relationship to them.
5. What number of living-rooms and bedrooms are contained in the said home, and what is the condition of the home.
6. What are the means of such persons.
7. Whether either of them suffers or has suffered from any serious illness, and whether there is any history of tuberculosis, epilepsy or mental illness in their families.
8. Whether any person specified in the notice of application as a person to whom reference may be made is a responsible person and recommends them without reservation.
9. Whether such persons understand that an adoption order is irrevocable and that the order if made will render them responsible for the maintenance and upbringing of the infant.

PART II

The Infant

10. Whether the infant has any right to or interest in any property.
11. Whether the infant (if of an age to understand the effect of an adoption order) wishes the order to be made.
12. Whether an order committing the infant to the care of a local authority as a fit person under the Children and Young Persons Act, 1933, of the United Kingdom, or a resolution for the assumption by a local authority of parental

rights, is in force in respect of the infant.

PART III

The Parents

13. Whether the mother consents to the adoption and identifies the birth certificate (if any) attached to the notice of application as the birth certificate of the infant.

14. Whether the father consents to the adoption.

15. If the infant is illegitimate, whether an affiliation order has been made against any person adjusted to be the putative father of the infant, or an agreement to contribute to the maintenance of the infant has been made by a person acknowledging himself to be the father of the infant, and in either case whether that person consents to the adoption.

16. When did the parent or parents part with the infant, and to whom?

17. What are the reasons of the parent or parents for consenting to the adoption order which is irrevocable, and that the order if made will deprive him or her of all rights in respect of the maintenance and upbringing of the infant?

19. Where the statement of application requests the Court to dispense with the consent of the parent, or either of the parents, on the ground that he or she cannot be found, what steps have been taken to trace him or her.