

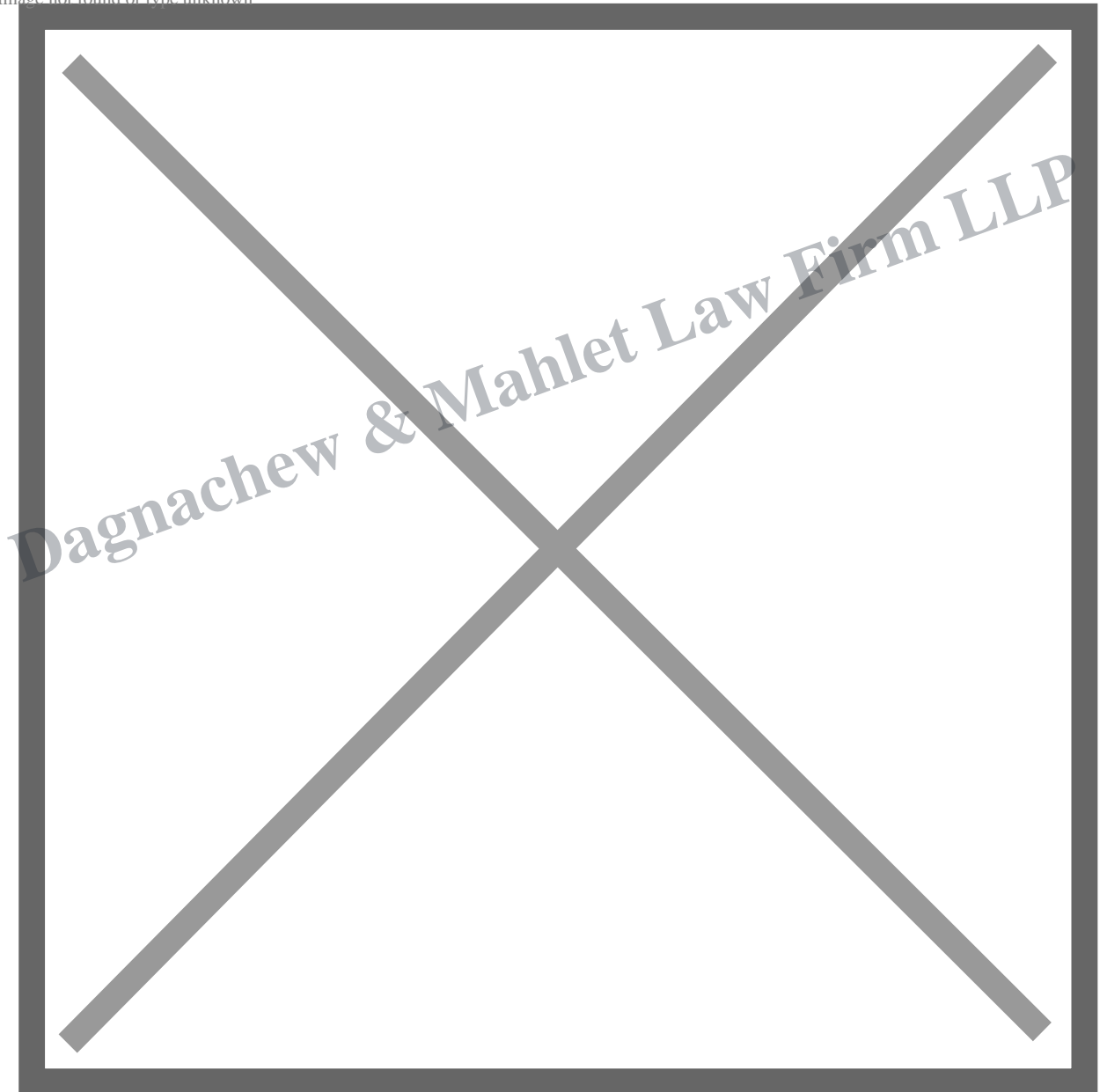
Adoption of an Ethiopian Child by a Foreigner Spouse

Description

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Introduction

This article summarizes the Federal Supreme Court Cassation Decision on File No 215383 on

30/05/2022. The adoption case is filed by the 1st and 2nd applicants, namely Wro Arsema and Mr. Yergen. There is no respondent on the case. The case is about whether or not a foreigner husband can adopt his step daughter who is the child of his Ethiopian wife?

Federal First Instance Court

The Applicants filed in the Federal First Instance Court for an approval of their adoption agreement. The child involved in the adoption is the child of the 1st applicant born prior to her marriage with the 2nd applicant. The second applicant who is the adopter of such stepchild is a Dutch nationality. The court said that due to Revised Family Code (Amendment) Proclamation No 1070/2018, adoption of an Ethiopian child by a foreigner is prohibited. Thus the applicants request of approval of their adoption is dismissed by the court.

Federal High Court Appeal

The Applicants submitted an appeal to the Federal High Court. However, the Federal High Court upheld the decision of the Federal First Instance Court.

Review by the Federal Supreme Court Cassation Bench



The Applicants presented their application for basic error of law to the Cassation Bench. The Applicants stated that the applicants are married in Ethiopia, have a son together and living in Ethiopia. The child to whom the adoption is requested is the daughter of the 1st applicant and not that of the 2nd applicant. Nowadays, this daughter lives together with her step father, who is the 2nd applicant and even uses his name as father's name as well. The Applicants argued, to enable such a daughter with equal status to her brother, who is born from both the applicants, the adoption by the step father is necessary. The Applicants said, rejecting our request for approval of such an adoption by the lower courts is not in the best interest of our daughter. Thus the Applicants demanded for the dismissal of the lower court's decision.

The Cassation bench accepted the request of the Applicants for review. The Cassation Bench identified the issue of whether Proclamation 1070/2018 is meant to prohibit adoption occurring between spouses or not?

The Cassation Bench raised the issue of the appropriate law to govern the case: is it Revised Family Code Proclamation 213/2000 or Proclamation No 1070/2018? The provisions of Proclamation No 213/2000 Article 187 provide the fact that married couples can adopt a child together or when the child

to be adopted is one of the spouses only, the adoption by the other spouse is possible. This provision of the Revised Family Code does not stipulate nationality of the spouses as a precondition for an adoption. This provision doesn't state the adoption of a child of one spouse by the other spouse is allowed only for Ethiopian married couples.

On the other hand, Proclamation No 1070/2018 contains provisions that order the cancellation of provisions of the Family Code Proclamation No 213/2000 Articles 193, 194(3)(d) and (4) that contain the word 'the adopter being a foreigner'. The Cassation court argued that the provision of Article 187 of the Revised Family Code is not deleted or amended by Proclamation No 1070/2018. Thus, the request of adoption of a child of the Ethiopian spouse born prior to the marriage to a foreigner spouse cannot be rejected mentioning Proclamation No 1070/2018. Specially given the fact that the spouses are married in Ethiopia and residing in Ethiopia as a couple. Therefore, the Cassation Bench concluded that the lower court's decision rejecting the adoption approval request of the Applicants is dismissed for basic error of law. The Cassation Court ordered the Federal First Instance Court to look into the matter from this perspective and pass a decision on the adoption approval request of the Applicants.

Conclusion

A foreign national spouse who is married to an Ethiopian national can adopt an Ethiopian child of his Ethiopian spouses and the Revised Family Code(Amendment) Proclamation No 1070/2018 is not intended to stop such an adoption request.

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