

Adopted Child Father's and Family Name: Cassation Bench Judgment

Description

By Dagnachew Tesfaye, Founder and Partner at DMLO

Email: dagnachew@dmethiolawyers.com

Introduction

The Federal Supreme Court(FSC) of Ethiopia Cassation Bench on File No 173628 Volume 24 held the position that adoption agreement approval does not affect the procedure in which adoption certificate will be issued. The adoption certificate that will be issued shall contain the adoptee's given name/s, father's and grand father's names. The father's name and grandfather's name shall come from the adoptive parent's names and not that of the family of origin. The request by the applicants to the bench to retain the original fathers and grandfathers names of the adoptees on the adoption certificate was disregarded by the FSC Cassation court as it is contrary to the Directive No 7/2018 Section 4 Sub section 3 Article 43(3) that is issued in accordance with the Registration of Vital Events and National Identity Card Proclamation No 760/2012 Article 70(2) and its amendment Proclamation No 1049/2017.

Background

The applicants were the birth parents and the adoptive mother suing the respondent Vital Event Registration Office. The claim of the applicants is that the Federal Court has approved their adoption agreement that allowed four children of the birth families to be the adopted children of the adoptor. Then the request of the applicants to register as it is the father's and grand father's name of the adopted children on the adoption certificate was met by opposition from the Vital Event Registration Office. The Office says that the adopted children's father's and grand father's name will change to that of the adoptive parent and it dismissed the request of the applicants. Here the applicants sued the Office's to be obliged to accept their request and its refusal to be dismissed.

First Instance and Appeal Courts

The suit of the applicants at the First Instance level was dismissed for lack of jurisdiction citing the reason that the claim should be presented to the special adoption bench or ask for execution of judgment based on the file the adoption agreement is approved. The applicants appealed to the Federal High Court. The High Court accepted the case and decided the case on the merits. The appellate court said that adoption certificates will not be issued unless the father and grandfather's names of the adopted children change to that of the adoptive parent. The court dismissed the appeal of the appellant based on Proclamation No 760/2012 and its amendment Proclamation No 1049/2017 and Directive No 7/2018 Article 30 Section 4 Sub-section 3 and Article 43.

Court of the FSC Cassation Bench

The Cassation court accepted the application of the applicant in Cassation file no 173628. The bench coined the issues of the case to relate to whether the position of the appellate court decision based on Proclamation No 760/2012 and its Directive 7/2018 contradict the already court approved adoption agreement?

The Cassation bench held the position that the already court approved adoption agreement only shows the existence of an agreement only. There was no determination by the court that approved the adoption agreement on the manner of issuance of an adoption certificate as per Proclamation No 760/2012 and its Directive No 7/2018. Thus the court said based on the approved adoption agreement, a relevant government office shall make sure the requirements are met when it issues the adoption certificate. The bench concluded that doing so is not contrary to the law or the approved adoption

agreement.

The Cassation court further concluded that as per Directive No 7/2018 Section 4 Sub Section 3 of Article 43, whenever the adoptive parent is a single woman, the name of the adopted child shall be the given name of the child on the adoption agreement, the father's name shall be the father's name of the adoptive mother and grand father's name shall be the grand father's name of the adoptive mother.

The Cassation bench highlighted that the procedure contained in the Directive 7/2018 Article 43(3) will not harm the best interest of the adopted child/children if implemented. Therefore, the Cassation bench upheld the appellate court decision and dismissed the applicants' requests.

Conclusion

The judgment emphasizes the fact that when an adoption certificate is issued, the names of the birth parents will change to that of the adoptive parent/s. Since adoption creates a permanent family relationship, the adoptive parent/s will have precedence or priority over that of the families of origin. As a result the adopted child/children will take their given name and in addition to that their father's name and grandfather's name will follow the adoptive family's name.

For further information please contact us at info@dmethiolawyers.com

Category

1. Latest Posts

Date Created

September 19, 2021

Author

dmethiol_admin

Dagnachew & Mahlet Law Firm LLP