



## HOW TO NAVIGATE THE PATH TO CHILD ADOPTION IN NIGERIA: PROCEDURES AND CONSIDERATIONS

### 1.0 INTRODUCTION

Since time immemorial, adoption has been a common practice in human society. Although different societies have different cultures and beliefs, families have been taking care of each other's offspring from birth to adulthood. Adoption is a distinctive form of parenting that enhances the welfare of a child and also contributes to our social civilization. It allows individuals with no affinity to a child to legally care for and assume responsibility for that child. It can better be described as a legal process by which a person assumes the parenting of another person, usually a child, from his biological parents. There is a process laid down in the Child's Rights Act, of 2003 for parents who intend to adopt to follow, and these processes are presumably oblivious to many Nigerians. Child adoption in Nigeria is still an evolving process therefore, the need to continuously educate and inform people on the procedures for adoption in Nigeria is very imperative. In this edition, we examine and discuss the child adoption, process and procedure for child adoption in Nigeria, eligibility, factors to be considered as well as the requirements.

### 2.0 WHO IS AN ADOPTABLE CHILD?

According to Section 128 of the Child's Rights Act 2003, persons who may be adopted are:

- a. A child whose parents or, where there is no surviving parent, the guardian of the child consents to the adoption; or
- b. A child who is abandoned, neglected or persistently abused, or ill-treated, and there are compelling reasons in the interest of the child why he should be adopted.

As for the first category, there must be clear consent from the parent or guardian of the child allowing the adoption. This means for adoption in Nigeria to be considered legal there must be consent of the parent or guardian. Where there is no consent, adoption cannot be said to be legal or valid. The second category doesn't require the consent of the parent or guardian rather, it is undertaken solely to protect the child or to serve the child's best interest.

### 3.0 WHO CAN ADOPT?

According to Section 129 of the Child's Right Act 2003 the following persons may apply for an adoption order:

- a. A married couple where –

- (i) Each of them has attained the age of twenty-five years, and
- (ii) There is an order authorizing them jointly to adopt a child; or
- b. A married person if he has obtained consent of his spouse, as required under Section 132 of the Act; or
- c. A single person, if he has attained the age of thirty-five years, provided that the child to be adopted is of the same sex as the person adopting; or
- d. In all cases specified in paragraphs (a), (b), and (c) of this Section, the adopter or the adopters shall be persons found to be suitable to adopt the child in question by the appropriate investigating officers.

The section discussed above stipulates the category of persons that can adopt. These persons will also need to fulfil certain requirements to be eligible to adopt. It goes without saying that child adoption is not just open to anyone, rather, it is governed by a specific set of rules that must be adhered to. The requirements for adoption will subsequently be discussed hereunder.

#### **4.0 CUSTOMARY ADOPTION**

Customarily, in Nigeria, adoption occurs within families where siblings take in a child or children of one another, and this can be done formally or informally. When done formally, there is a clear and express transfer of parental rights from the parents to the adopting parents. The case of *Akinwade v. Dogbo* (unreported judgment of the High Court of Abeokuta Suit AB/26/68 Delivered on 14th July 1969) lend credence to this formal customary adoption. In the judgment, the court remarked to the event that under customary law, children of relatives in need of care and protection are regarded as adopted children and made to enjoy the privileges of parenthood without discrimination. Customary adoption can also be informal where for instance there is no express transfer of parental rights, but the child continues to live with the adopting parents for a lengthy period of time.

#### **5.0 LEGAL/STATUTORY ADOPTION**

This is an adoption conducted according to statutes or written laws where a person undertaking the adoption takes the full legal and parental responsibility of a child. The Child's Right Act 2003 is the primary law that governs statutory adoption in Nigeria, and it encompasses all the necessary procedures undertaken during adoption while reiterating the fact that the best interest of the child shall be the primary consideration.

#### **6.0 REQUIREMENTS FOR LEGAL ADOPTION**

Section 126(1) of Child's Right Act 2003 lists the requirements to be attached to a court application for adoption as follows:

- (1) An application for adoption shall be made to the Court in such form as may be prescribed, and shall be accompanied with –
  - (a) Where the applicant is a married couple, their marriage certificate, or a sworn declaration of marriage.
  - (b) The birth certificate or sworn declaration of age of each applicant.
  - (c) Two passport photographs of each applicant.
  - (d) A medical certificate of fitness of the applicant from a government hospital.



- (e) Such other documents, requirements, and information as the Court may require for the purpose of the adoption.

The Child's Right Act 2003 specifies the requirements for adoption in Nigeria in this Section, and adherence to these requirements in line with standard procedures is important for the validity of any adoption.

## **7.0 OTHER REQUIREMENTS FOR ADOPTION**

Beside the other requirements mentioned as stated under the provision of Section 126 of the Child's Right Act 2003, the following are also required of the applicant to meet up:

**i. Religion of the child:**

The court in hearing an application for grant of adoption of a child will consider the religious background of the parent or guardian of the child. This will be more so where the parent or guardian of the child indicates the religious belief of the person who wants to adopt the child. In a case where the parent or guardian of the child cannot be found or where they are incapable of giving their consent and approval, the court will make inquiry as to the religious background of the child. This can be done through any person appointed for the purpose.

**ii. Age of the child and the Applicant:**

In a case of a single person, he/she must be thirty-five (35) years old at the time of applying for the adoption. In a case of married couple, either of them must be twenty-five (25) years old. In either case, the applicant must be older than the child for at least twenty-one (21) years.

**iii. Sex:**

This is only required for a single person to the effect that the child must be of the same sex with the Applicant.

**iv. Residence:**

Both the Applicant and the child to be adopted must reside in the same state. In fact, the Applicant is expected to have lived in the state of the child to be adopted five (5) years preceding the time of the application.

**v. Notification of intention:**

Here, the Applicant is expected to have notified the social welfare officer in the government ministry or agency established for the welfare and care of children in the state of his intention to adopt a child twelve (12) months before the application to court for grant of adoption.

**vi. Necessary consent obtained:**

Necessary consent of the parent or guardian of the child must be first sought and obtained. Necessary consent of any person or government official having an existing right and duty



over the child must equally be obtained. In a case of married couple, the consent of the other spouse or partner must also be sought and obtained, however, it is not that all these individual consents must be required at a time. It depends on each situation.

## **1.0 PROCEDURE FOR LEGAL ADOPTION**

### **1. Application:**

After you have notified the necessary government agency involved of your intention to adopt a child, and you have identified a child for adoption, the next step is to apply to court for an order to legally recognize the child as your adopted child. The application has to be in the necessary format and form as maybe required by court.

### **2. Investigation:**

Following your application, the court will call for investigation as to determine your suitability to have the child in your care or custody. The Court will assign necessary persons to do this who will report back to the court as to your qualification.

### **3. Grant of the Application:**

Assuming the report of the court-appointed investigator certifies the applicant to be fit and proper to adopt the child, the application will be granted. Consequently, the applicant will become the legal parent of the adopted child. There could be reasons for the refusal of the grant, and this largely depends on the findings of the appointed investigator who is supposed to be dutiful and faithful to the court. The grant of the application can be permanent wherein you are given absolute rights and responsibilities over the child without recourse to court again. It could also be temporary where the child is given to a prospective parent to observe the relationships and dealings with the child for a period which will not exceed two (2) years to determine the final entitlement to him. Even where the grant is permanent, the court can attach certain terms and conditions to it all for the benefit and interest of the child.

## **9.0 FACTORS TO CONSIDER FOR ADOPTION**

The court will consider the following as operating factors in the grant of an application for adoption:

- i. Where the safety and welfare of the child will most be granted. So, the financial and social status of the prospective parent(s) will be a prime factor here.
- ii. Age and Sex of both the Applicant and the child will be considered particularly where the Applicant is single.
- iii. State of Residence of the Applicant will be considered in view of the place of residence of the child. It is a crime for an applicant or any person assisting one way or the other to secure the adoption of child in a state for another state. The punishment ranges from 10 years to 15 years imprisonment if a person is found guilty. Even though the law



requires the parent and the child to be resident in the same state, if the parent wants to travel or move out of the state where the adoption order is granted, the right thing to do is to approach that same court for directions.

- iv. Court will consider the religion of the child and the Applicant particularly where the parent or the guardian of the children so indicates that the person that will adopt his child must be of the same religion with him or the child.
- v. Wishes and feelings of the child are also considered during adoption. This is specifically for the child to express his/her feelings to the court regarding the Applicant. This is usually where a temporary order is granted for the Applicant to have the custody and care of the child for a while before the final and absolute grant.
- vi. The Applicant must also not be related with the child by affinity.
- vii. The Applicant must not be doing the adopting for any reward or benefit, and he must also not reward any person in the course of adopting the child.

## **10.0 RIGHTS AND CONSEQUENCES OF ADOPTION**

A child adopted is deemed to be the child of the Applicant/adopting parent by all ramifications. The following are consequences of adoption.

- i. All rights, obligations, duties, liabilities, and responsibilities of a person either the biological parent, guardian, or other person in care of the child before cease to exist from the time of the grant of the application for adoption by court.
- ii. The Applicant assumes all rights, obligations, duties, liabilities, and responsibilities over the adopted child.
- iii. The child will have all rights and duties as if he is a natural child of the adopting parent including rights to inherit the adopting parent.
- iv. The adopting parents cannot marry the adopted child. Also, the natural child of the adopting parent(s) cannot marry the adopted child and vice versa. This is because the adopted child is regarded to be part of the family that adopts him or her.

## **11.0 COURT WITH JURISDICTION**

Both Magistrate and High Courts have jurisdiction on matters relating to children welfare generally, not limited to adoption. There is usually a session of both Magistrate and High Courts commonly referred to as Family Court created for the purpose of attending to children related issues. Where a child related matter starts from a Magistrate court, an appeal therefore will lie with the High Court. As a matter of practice, Family Court that will attend to children related matters is usually created at the Magistrate level.



## 12.0 CONCLUSION

As discussed above in the beginning of this article, there is the continuous need to educate and inform the citizenry on the procedures for adoption in Nigeria as the processes are largely oblivious to most people. Child adoption should not be seen as something that one can do at will. It is a procedure that requires mental, emotional, financial, and physical stability much like bearing natural children wherein the prospective parents are expected to care for the child as if the child was biologically born by them. The Child's Rights Act encompasses and stipulates the rules which adoption is bound by, and the paramount stipulation is that the best interest of the child shall be the primary consideration.

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Feel free to contact us for any inquiry or request for any further information about

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