

**ADOPTION AND IMMIGRATION LAW IN**

**NIGERIA**

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## **INTRODUCTION**

Before 1965, there was no legislation regarding adoption in Nigeria which made it hard to distinguish between adoption and guardianship. When a child was taken in by another family, the blood parents of the child could return and take back the child rightfully even against the will of the guardian. Then in 1965, adoption was officially recognized.

The adoption of a child severs the ties between a child and his or her legitimate family and thus, the biological parents are no longer regarded as the parents of the child. Once a child has been adopted, legitimate ties have been created between the child and the adoptive parents as though they are biological parent and child. The main law that guides adoption process today is the Child's Right Act of 2003. The court has the power to make orders concerning adoption.<sup>i</sup>

Nigeria is diverse and along with statutory law; there are also rules guiding adoption under statutory law.

## **ADOPTION UNDER STATUTORY LAW**

### **WHO MAY ADOPT?**

Section 121(a)-(d) of the Child's Right Law, 2008 provides that the persons who can adopt a child is:

- A married couple where both of the parties are at least of the ages of twenty-five;
- A married person that has obtained the consent of the spouse;
- A single person that is at least the age of thirty-five and the child to be adopted is the same sex as the aspiring adopter;

## **WHO MAY BE ADOPTED?**

Section 120 (a)-(b) provides that any child, on the consent of the parents, or where there are no surviving parents, on the consent of the guardian can be adopted; or a child that has been “abandoned, abused, persistently neglected or ill-treated” and there are compelling reasons in the interest of the child may be adopted.

## **APPLICATION FOR ADOPTION**

An application for adoption is made to the Magistrate Family Court and appeals can be made to the High Family Court<sup>ii</sup>. Section 126 of the Child Right’s Act states that the application for adoption shall be accompanied with<sup>iii</sup>:

- If the applicant is a married couple, a marriage certificate or affidavit; declaration of marriage;
- Birth certificate or affidavit of age for each applicant;
- Two passport photographs of each applicant;

- A medical certificate issued by a government hospital stating the applicant's eligibility; and
- other documents, requirements and information the court may require<sup>1</sup>.

On receiving the application thereafter, the court will order an investigation to be carried through supervision officers or child development officers to determine if the applicant is suitable enough to adopt the child<sup>2</sup>.

Section 137 of the Act provides that the Chief Justice of Nigeria is authorized to establish rules governing the court's practice and procedure in adoption issues<sup>3</sup>; this includes<sup>4</sup>:

- the authority to make provisions for adoption orders to be heard and decided elsewhere than an open court;
- the admission of documentary evidence of any consent required;
- requiring the child development officer to prepare a report for the Court's consideration on an application for an adoption order in order to help the Court in evaluating whether the order will be in the child's welfare and best interests.

## **PROCEDURE FOR MAKING ADOPTION ORDER**

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<sup>1</sup> (1) (a)-(e)

<sup>2</sup> (2) (a)-(b)

<sup>3</sup> (1)

<sup>4</sup> (2) (a)-(c)

The procedure for making adoption orders differ from place to place. In Lagos, the prospective adopting parents must have fostered the child for three months immediately preceding the adoption order.

The first thing to get done is to get the pre-approval of the state welfare agency. The prospective adopters must make a formal request to the State government welfare agency to get approval to begin the adoption process. The adopters are interviewed by the Director of Social Welfare to determine if they are fit to adopt the child. If such approval is granted, then the child is allowed to stay with the prospective adopters for three months.

The next step of the process is to make an application to the court. Such application must be submitted to the registrar. Such application is to accompanied by the relevant documents needed such as the birth certificate, marriage certificate, a medical certificate stating the eligibility of the prospective adopter and other documents needed.

On receiving the application, the court orders an investigation to be conducted by Social Welfare Officers to determine the suitability of the prospective adopter and the child to be adopted. The court assigns a guardian as litem to the child to be adopted to be represent that child in the adoption proceedings. Guardian ad litem is appointed specifically to represent such an individual's interests in legal proceedings. The guardian ad litem investigates the circumstances related to the proposed adoption and files a report to the court.

After such process, the social welfare officers visit the home of the applicants until they are well satisfied that the child is well-settled into the home and is well looked after, afterwards the officer submits a positive recommendation to the court.

The court then will meet with the prospective adopters and issue or deny the adoption order. In giving an adoption order, the court considers the welfare and the best interest of the child and the wishes and feelings of the child in regards to the age and understanding of that child<sup>5</sup>.

After such order has been given by the court; the adoptive parents are to issue a new birth certificate for the child listing them as the child's parents. In addition, the social welfare officer may be required to submit a letter to the immigration office stating that the adopters have become the legal parents of the child, this enables the adopters to apply for a passport to take the child out of Nigeria.

The process and the outcome of the adoption process is to be stated in the Adoption Register, such copy is to be stamped and sealed by the registrar's office as proof of the adoption.

## **RESTRICTION ON APPLICATION OF ADOPTION ORDERS**

Section 131 of the Child's Right Act states that an adoption order may not be made unless:

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<sup>5</sup> (3) (a)-(b)

- the applicant (or in the case of a joint application, one of them) is not less than twenty-five years old and is at least, twenty-one years older than the child;
- the applicant (or in the case of a joint application, at least one of them) and the child are resident in the same State;
- the applicant has been resident (or in the case of a joint application, both of them) have been resident in the State in which the application is made for a period of at least five years;
- the applicant is a citizen (or in the case of a joint application, both applicants are citizens) of Nigeria;
- the child has been in the care of the applicant for a period of at least three consecutive months immediately preceding the date on which the order is made;
- the applicant has, at least twelve months before the making of the order, informed the social welfare officer of his intention to adopt the child.

For an adoption order to take effect, there has to be the consent of the adoptee.

In the case of a married couple, if the consent of the spouse is not given then the court will not make the order of adoption to be given to the applicant.

If the court is satisfied that any person other than the child's parents or relatives has rights or obligations in respect of the child by order, agreement, or common law, otherwise the court may refuse to make an adoption order<sup>6</sup>.

## **JURISDICTION OF THE COURT**

In some states, both the High Court and the Magistrate's Court have jurisdiction to make adoption orders where the juvenile resides, whereas in others, only the Magistrate's Court has jurisdiction in adoption cases<sup>iv</sup>.

Section 138 of the Child's Right Act states that an appeal shall be made to the High Court from the Magistrate Court in respect of any application for an adoption order other than a decision to postpone the determination for the adoption order and make an interim order. Where the High Court exercises original or appellate jurisdiction, appeal shall lie to the Court of Appeal<sup>7</sup> and proceeding in respect of an appeal shall be conducted within chambers<sup>8</sup>.

## **ADOPTION UNDER CUSTOMARY LAW**

Under customary, any adult, either male or female, may adopt a child and any under the age of puberty can be adopted. In most cases, children are adopted by their blood relatives.

Under customary law, the method of adoption is either formal or informal.

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<sup>6</sup> 132 (2)

<sup>7</sup> 138 (2)

<sup>8</sup> 138 (3)

## **FORMAL ADOPTION**

Under formal customary law adoption, there is a meeting of the two families' representatives involved. The family of the prospective parent and the child being adopted. The parental rights and responsibilities are accepted by the prospective parent and the agreement between the two parties is sealed.

The final step is the adoptive parent presents the child to the family at the meeting and expresses his intent to regard the child as his natural child. On approval of the family, the child is regarded as a member of that family.

## **INFORMAL ADOPTION**

Under informal adoption there are no meetings between families or family representatives. The child is brought into the home and treated as the natural child. The child treats and regards the parent as his natural-born parent and the parent regards the child as his natural-born child. Over time, the child is fully assimilated into the family and be regarded as the adopted child of that family. In most cases, the child is a blood-relative of the parent. The child will be regarded as the adopted child and take the last name of that family unless the members of that family objects to it. When a child grows up in that family he can be said to be adopted.

In **Akinwande v Dogbo**<sup>9</sup>, where the child was the infant of the sister who was deceased, he was taken into the care of the defendant and the court held that the child was adopted.

Under customary law, for adoption to take place there must be consent of the parties. In **Plange v Plange**<sup>10</sup>, the Ghana court of appeal held that the essential requirement of a valid customary law adoption is for the adopter to express his desire to adopt the child into his own family in the presence of witnesses.

Once a child has been adopted into the family he has the same rights and obligations to the adoptive parent as a legitimate child would have and vice-versa.

## **IMMIGRATION LAW IN NIGERIA**

Immigration is the process by which an individual becomes a permanent resident of another country.

The Immigration Act of 1963 was the first law made in Nigeria for the purpose of governing immigration responsibilities, and it has been amended twice over the years, the present law is the Immigration Act 2015 that came into effect on the 25<sup>th</sup> May, 2015. The Immigration Act 2015, Immigration Regulations 2017 and the New Visa Policy 2020 are the laws that make up Nigeria's immigration regulation framework amongst other legislations<sup>v</sup>. The Immigration Act covers all matters relating to immigration, passports, visas, resident permits, work

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<sup>9</sup> Suit no AB/26/28 (unreported) High Court Abeokuta. 14 July 1969

<sup>10</sup> (1997) 1 GHR 312

permits, and the prohibition of smuggling of migrants into and from Nigeria, and for the protection of and provision of remedies and assistance to, objects of smuggling of migrant's offences in Nigeria<sup>vi</sup>.

The body entitled to carry out actions concerning matters of immigration in Nigeria is the Nigerian Immigration Service which was established in 1963. The Nigerian Immigration Service is the entity with the legal authority to issue or award such visas and permits.

The Nigerian Immigration Service is given authority to be in charge of controlling anyone leaving or entering the country by Section 2 of the Immigration Act. They are in charge of granting passports to residents both within and outside Nigeria as well as residence permits<sup>11</sup> to foreign nationals; they are also responsible for the deportation of prohibited immigrants<sup>12</sup>.

Under section 1(2) of the Act provides that the provisions of the law are applicable to every person entering or leaving Nigeria and that the law shall not be interpreted to prohibit a citizen of the country or any persons with valid travel documents, from entrance into the country<sup>13</sup>. The Act states that a citizen of Nigeria cannot be deported from the country<sup>14</sup>.

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<sup>11</sup> s.10

<sup>12</sup> s.19(1)

<sup>13</sup> (b)

<sup>14</sup>(e)

The Director of the Immigration Service is appointed by section 5 of the Act, the director can there afterwards appoint deputy directors to assist in carrying out the duties of the Immigration Service.

To guarantee appropriate authorization of people at the border, the agency is also authorized to provide travel documents to Nigerians within or outside of the nation. They provide documents to foreigners living in Nigeria in addition to Nigerians. The service has recently created The Combined Expatriate Residence Permit and Aliens Card (CERPAC), which a foreigner must get in order to dwell permanently in Nigeria<sup>vii</sup>.

An Immigration Officer has the power to refuse or admit (subject to conditions) a person's entry into the Nigeria; such notice of refusal or admission must be given to the person of interest by notice in writing. The notice may, at any time, be cancelled by subsequent notice in writing<sup>15</sup>.

## **PROHIBITED IMMIGRANTS**

Section 18 of the Immigration Act, 2015 provides that any person:

- without visible means of support or likely to become “a public charge”;
- appearing to be “an idiot, insane person or a person suffering from any mental disorder”;

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<sup>15</sup> Section 7 (2)-(3)

- convicted of any crime in any other country where the crime was committed;
- that the admission of the person is deemed contrary to the interest of national security;
- who already has an order of deportation from Nigeria in force;
- who does not have a valid passport in his possession; or any person below the age of sixteen years does not have a valid passport and is not under the supervision of an adult;
- that is a prostitute;
- who has been a brothel keeper, a household owner that gave permission for the defilement of a young girl on his premises, who was allowed for person under thirteen to be in a brothel, a person that causes or encourages a young girl under the age of thirteen years to be in a brothel, a person trading in prostitution or a procurer.

## **DEPORTATION**

Section 19-25 of the Act contain provisions pertaining to deportation of persons. Section 19 provides for the deportation of persons not allowed in the country, also known as prohibited immigrants. A person may be deported from the country, if the minister has been satisfied that it is in the interest of the public, and it is no defense that no notice was given to such person about the prohibition of his entry into the country.

The court may also make a recommendation of deportation to the Minister in regard of a person. The Minister can also revoke the order of the deportation of a person before or after he has exited the country.

## **CONCLUSION**

The laws governing the adoption process is the Child Rights Act and the Child Rights Law, which both agree that in the adoption process, the welfare and the best interest of the child is the paramount consideration of the court. The prospective parent has to be checked by the supervision officers if the person really has the means to take care of the child. In Nigeria, due to the indigenous nature of the country, adoption mainly exists under statutory law and customary law. Under customary law adoption can be either formal or informal both of which the adoption of the child into the family is solidified by the agreement of the family members to welcome the child into the family as one of their own.

The Immigration Act is concern with the entrance and the exit of persons into and out of the country. The body which handles such matters relating to Immigration in Nigeria is the Nigerian Immigration Service which is concerned with granting passports to citizens within and outside the country and deportation of persons. The Minister has the power to make decisions concerning immigration and deportation.

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<sup>i</sup> Child's Rights Act section 130

<sup>ii</sup> Child's rights law section 128

<sup>iii</sup> [childrightact.pdf \(nigeriarights.gov.ng\)](#)

<sup>iv</sup> <https://nji.gov.ng/wp-content/uploads/2019/04/ADOPTION-GUARDIANSHIP-AND-FOSTERING.pdf>

<sup>v</sup> The Regulatory Framework Governing Immigration and Available Visas in Nigeria - Tekedia

<sup>vi</sup> IMMIGRATION ACT, 2015 (lawnigeria.com)

<sup>vii</sup> 20 Functions of Nigeria Immigration Service (2023) – Information (naijaquest.com)