

CHAPTER 335
THE ADOPTION OF CHILDREN ACT
[PRINCIPAL LEGISLATION]
ARRANGEMENT OF SECTIONS

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SCHEDULES
CHAPTER 335
THE ADOPTION OF CHILDREN ACT

An Act to provide for the adoption of children and for related matters.

[1st January, 1955]

Ord. No. 42 of 1953

[R.L. Cap. 335]

Acts Nos.

29 of 1967

4 of 1968

G.N. No. 48 of 1962

PART I PRELIMINARY PROVISIONS (ss 1-2)

1. Short title

This Act may be cited as the Adoption of Children Act.

2. Interpretation

(1) In this Act, unless the context requires otherwise—

"adoption order" has the meaning assigned to it by section 3 of this Act;

"child" means a person under twenty-one years of age, but does not include a person who is or has been married;

"Court" means the High Court;

"East Africa" means the United Republic, Kenya and Uganda;

"father" in relation to a child born out of wedlock, means the natural father;

"guardian", in relation to a child, means a person appointed by deed or will or by a court of competent jurisdiction to be the guardian of the child;

"interim order" means an order under section 8 of this Act;

"Minister" means Minister responsible for legal affairs;

"prescribed" in Part II of this Act, means prescribed by rules made by the Court under section 11, and elsewhere than in Part II of this Act, means prescribed by regulations made by the Minister under section 23 of this Act;

"registered adoption society" means a body of persons registered as an adoption society in accordance with the provisions of Part V of this Act;

"Registrar-General" means the Registrar-General of Births and Deaths appointed under section 3 of the Births and Deaths Registration Act ^{i*};

"relative", in relation to a child, means a grandparent, brother, sister, uncle or aunt, whether of the full blood, of the half-blood or by affinity, and includes—

(a) where an adoption order has been made in respect of the child or any other person under this Act or any other law relating to adoption for the time being in force in East Africa or the United Kingdom, any person who would be a relative of the child within the meaning of this definition if the adopted person were the child of the adopter born in lawful wedlock;

(b) where the child is illegitimate, the father of the child and any person who would be a relative of the child within the meaning of this definition if the child were the legitimate child of his mother and father;

"United Kingdom" means Great Britain and Northern Ireland.

(2) For the purposes of this Act a person shall be deemed to make arrangements for the adoption of a child if, not being a parent or guardian of a child, he enters into or makes any agreement or arrangement for, or for facilitating, the adoption of the child by any other person, whether the adoption is effected, or is intended to be effected, in pursuance of an adoption order or otherwise, or if he initiates or takes part in any negotiations of which the purpose or effect is the conclusion of an agreement or the

making of any agreement therefor, or if causes another to do so.

PART II **MAKING OF ADOPTION ORDERS (ss 3-11)**

3. Power to make adoption orders

(1) Subject to the provisions of this make Act, the Court may, upon an application made in the prescribed manner, make an order, in this Act referred to as an adoption order, authorising the applicant to adopt a child.

(2) An adoption order may be made on the application of two spouses authorising them jointly to adopt a child.

(3) An adoption order may be made authorising the adoption of a child by the mother or father of the child, either alone or jointly with her or his spouse.

4. Restrictions on making adoption orders

(1) An adoption order shall not be made in respect of a child unless the applicant or, in the case of a joint application, one of the applicants—

- (a) has attained the age of twenty-five and is at least twenty-one years older than the child; or
- (b) has attained the age of twenty-one and is a relative of the child; or
- (c) is the mother or father of the child.

(2) An adoption order shall not be made in respect of a child who is a female in favour of a sole applicant who is a male, unless the court is satisfied that there are special circumstances which justify as an exceptional measure the making of an adoption order.

(3) Except as provided by subsection (2) of section 3 of this Act, an adoption order shall not be made authorising more than one person to adopt a child.

(4) Subject to the provisions of section 5 of this Act, an adoption order shall not be made—

- (a) in any case, except with the consent of every person who is a parent or guardian of the child or who is liable by virtue of any order or agreement to contribute to the maintenance of the child;
- (b) on the application of one of two spouses, except with the consent of the other spouse.

(5) An adoption order shall not be made in favour of any applicant who is not resident in Tanzania or in respect of any child who is not resident within East Africa.

(6) An adoption order shall not be made in respect of any child unless the child has been continuously in the care and possession of the applicant for at least three consecutive months immediately preceding the date of the order.

5. Consent to adoption

(1) The Court may dispense with any consent required by paragraph (a) of subsection (4) of section 4 of this Act if it is satisfied—

- (a) in the case of a parent or guardian of the child, that he has abandoned, neglected or persistently ill-treated the child;
- (b) in the case of a person liable by virtue of an order or agreement to contribute to the maintenance of the child, that he has persistently neglected or refused so to contribute;
- (c) in any case, that the person whose consent is required cannot be found or is incapable of giving his consent, or that his consent is unreasonably withheld.

(2) The Court may dispense with the consent of the spouse of an applicant for an adoption order if satisfied that the person whose consent is to be dispensed with cannot

be found or is incapable of giving the consent or that the spouses have separated and are living apart and that the separation is likely to be permanent.

(3) The consent of any person to the making of an adoption order in pursuance of an application may be given, either unconditionally or subject to conditions with respect to the religious persuasion in which the child is to be brought up, without knowing the identity of the applicant for the order; and where consent so given by any person is subsequently withdrawn on the ground only that he does not know the identity of the applicant, his consent shall be deemed for the purposes of this section to be unreasonably withheld.

(4) While an application for an adoption order in respect of a child is pending in any court, any parent or guardian of the child who has signified his consent to the making of an adoption order in pursuance of the application shall not be entitled, except with the leave of the Court, to remove the child from the care and possession of the applicant; and in considering whether to grant or refuse such leave the Court shall have regard to the welfare of the child.

6. Evidence of consent of parent or guardian

(1) Where any person whose consent to the making of an adoption order is required by paragraph (a) of subsection (4) of section 4 of this Act does not attend in the proceedings for the purpose of giving it, then, subject to the provisions of subsection (3) of this section, a document signifying his consent to the making of such an order shall, if the person in whose favour the order is applied for is named in the document or, where the identity of that person is not known to the consenting party, is distinguished therein in the prescribed manner, be admissible as evidence of that consent, whether the document is executed before or after the commencement of the proceedings.

(2) Where any such document is attested by a magistrate or justice of the peace, or, if executed outside Tanzania, by a person of any such class as may be prescribed, the document shall be admissible without further proof of the signature of the person by whom it is executed; and for the purposes of this subsection, a document purporting to be attested shall be deemed to be so attested, and to be executed and attested on the date and at the place specified therein, unless the contrary is proved.

(3) A document signifying the consent of the mother of a child shall not be admissible under this section unless—

- (a) the child was at least six weeks old on the date of the execution of the document; and
- (b) the document was attested on that date by a magistrate or justice of the peace, or, as the case may be, by a person of a class prescribed for the purposes of subsection (2) of this section.

7. Functions of Court as to adoption orders

(1) The Court before making an adoption order shall be satisfied that—

- (a) every person whose consent is necessary under this Act, and whose consent is not dispensed with, has consented to and understands the nature and effect of the adoption order for which application is made, and in particular in the case of any parent understands that the effect of the adoption order will be permanently to deprive him or her of his or her parental rights;
- (b) the order if made will be for the welfare of the infant, due consideration being for this purpose given to the wishes of the child, having regard to the age and understanding of the child; and
- (c) the applicant has not received or agreed to receive, and that no person has made or given or agreed to make or give to the applicant, any payment or other reward in consideration of the adoption except such as the Court may sanction.

(2) The Court in an adoption order may impose such terms and conditions as the Court may think fit, and in particular may require the adopter by bond or otherwise to make for the child such provisions, if any, as in the opinion of the Court is just and expedient.

8. Interim orders

(1) Subject to the provisions of this section, the Court may, upon any application for an adoption order, postpone the determination of the application and make an interim order giving the custody of the child to the applicant for a period not exceeding two years by way of a probationary period upon such terms as regards provision for the maintenance education and supervision of the welfare of the child and otherwise as the Court may think fit.

(2) All such consents as are required to an adoption order shall be necessary to an interim order but subject to a like power on the part of the Court to dispense with any such consent.

(3) An interim order shall not be made in any case where the making of an adoption order would be unlawful by virtue of subsection (5) of section 4 of this Act.

(4) An interim order shall not be deemed to be an adoption order within the meaning of this Act.

9. Adoption order in respect of a child previously adopted

An adoption order or an interim order may be made in respect of a child who has already been the subject of an adoption order under this Act or any other law relating to adoption for the time being in force in any of the East African countries and upon an application for an adoption order in respect of such a child, the adopter or adopters under the previous or last previous adoption order shall, if living, be deemed to be the parent or parents of the child for all the purposes of this Act.

10. Appeal

Any person aggrieved by any adoption order or interim order of the Court in proceedings under this Act may appeal therefrom in the same manner as if it were a decree made by the Court in a suit under the Civil Procedure Code ^{ii*}, or any enactment replacing or amending the same, in the exercise of its original civil jurisdiction.

11. Power to make rules and procedure

(1) The Court may make rules in regard to any matter to be prescribed under this Part, and dealing generally with all matters of procedure and incidental matters arising out of this Part and for carrying this Part into effect, and such rules may provide for applications for adoption orders being heard and determined otherwise than in open court.

(2) For the purpose of any application for an adoption order, the Court shall, subject to any rules under this section, appoint some person to act as *guardian ad litem* of the child upon the hearing of the application with the duty of safeguarding the interests of the child before the Court.

PART III EFFECTS OF ADOPTION ORDERS (ss 12-15)

12. Rights and duties of parents and capacity to marry

(1) Upon an adoption order being made, all rights, duties, obligations and liabilities of the parents or guardians of the child in relation to the future custody, maintenance and education of the child, including all rights to appoint a guardian and to consent or give notice of dissent to marriage, shall be extinguished, and all such rights, duties, obligations and liabilities shall vest in and be exercisable by and enforceable

against the adopter as if the child were a child born to the adopter in lawful wedlock; and in respect of the matters aforesaid and in respect of the liability of a child to maintain its parents the child shall stand to the adopter exclusively in the position of a child born to the adopter in lawful wedlock.

(2) In any case where two spouses are the adopters, the spouses shall in respect of the matters aforesaid, and for the purpose of the jurisdiction of any Court to make orders as to the custody and maintenance of and right of access to children, stand to each other and to the child in the same relation as they would have stood if they had been the lawful father and mother of the child and the child shall stand to them respectively in the same relation as to a lawful father and mother respectively.

(3) For the purpose of the law relating to marriage, an adopter and the person whom he has been authorised to adopt under an adoption order shall be deemed to be within the prohibited degrees of consanguinity; and the provisions of this subsection, shall continue to have effect notwithstanding that same person other than the adopter is authorised by a subsequent order to adopt the same child.

13. Affiliation orders, etc.

(1) Where an adoption order is made in respect of a child who was born out of wedlock, then, subject to the provisions of this section, any order under section 5 of the Affiliation Act ^{iii*} and any other decree or order of any Court in Tanzania and any agreement whereby the father of the child has been ordered or has undertaken to make payment specifically for the benefit of the child, shall cease to have effect, but without prejudice to the recovery of any arrears which are due under the order, decree or agreement at the date of the adoption order.

(2) Where a child to whom any such order, decree or agreement under subsection (1) relates, is adopted by his mother, and the mother is a single woman, the order, decree or agreement shall not cease to have effect by virtue of the subsection (1) upon the making of the adoption order, but shall cease to have effect if she subsequently marries.

14. Intestacies, wills and settlements

(1) Where, at any time after the wills and making of an adoption order the adopter or the settlements adopted person or any other person dies intestate in respect of any real or personal property, other than property subject to an entailed interest under a disposition made before the date of the adoption orders, that property shall devolve in all respects as if the adopted person were the child of the adopter born in lawful wedlock and were not the child of any other person.

(2) In any disposition of real or personal property made after the date of an adoption order—

- (a) any reference, whether express or implied, to the child or children of the adopter shall, unless the contrary intention appears, be construed as, or as including, a reference to the adopted person;
- (b) any reference, whether express or implied, to the child or children of the adopted person's natural parents or either of them shall, unless the contrary intention appears, be construed as not being, or as not including, a reference to the adopted person; and
- (c) any reference, whether express or implied, to a person related to the adopted person in any degree shall, unless the contrary intention appears, be construed as a reference to the person who would be related to him in that degree if he were the child of the adopter born in lawful wedlock and were not the child of any other person.

(3) For the purposes of this section the expression "disposition" means a

disposition of any interest in property by any instrument whether *inter vivos* or by will including codicil.

15. Provisions supplementary to section 14

(1) For the purposes of the application of any law for the time being in force in Tanzania to the devolution of any property in accordance with the provisions of section 14 and for the purposes of the construction of any such disposition as is mentioned in that section, an adopted person shall be deemed to be related to any other person being the child or adopted child of the adopter or, in the case of a joint adoption, of either of the adopter—

- (a) where he or she was adopted by two spouses jointly, and that other person is the child or adopted child of both of them, as brother or sister of the whole blood;
- (b) in any other case, as brother or sister of the half-blood.

(2) Notwithstanding any rule of law, a disposition made by will or codicil executed before the date of an adoption order shall not be treated for the purposes of section 14 as made after that date by reason only that the will or codicil is confirmed by a codicil executed after that date.

(3) Notwithstanding anything in section 14 of this Act, trustees or personal representatives may convey or distribute any real or personal property to or among the persons entitled without having ascertained that no adoption order has been made by virtue of which any person is or may be entitled to any interest therein, and shall not be liable to any such person of whose claim they have not had notice at the time of the conveyance or distribution; but nothing in this subsection shall prejudice the right of any such person to follow the property, or any property representing it, into the hands of any person, other than a purchaser, who may have received it.

(4) Where an adoption order is made in respect of a person who has been previously adopted, the previous adoption shall be disregarded for the purposes of section 14 of this Act in relation to the devolution of any property on the death of a person dying intestate after the date of the subsequent adoption order and in relation to any disposition of property made after that date.

PART IV REGISTRATION OF ADOPTION ORDERS (ss 16-18)

16. Adopted Children Register

(1) The Registrar-General shall maintain a register, to be called the Adopted Children Register, in which shall be made such entries as may be directed to be made therein by adoption orders, but, except as provided by section 18 of this Act, no other entries.

(2) A certified copy of any entry in the Adopted Children Register, if purporting to be sealed or stamped with the seal of the Registrar-General, shall, without any further or other proof of that entry, be received as evidence of the adoption to which it relates and, where the entry contains a record of the date of the birth or the country of birth of the adopted person, shall also be received as evidence of that date or country in all respects as if the copy were a certified copy of an entry in the Register of Births.

(3) The Registrar-General shall cause an index of the Adopted Children Register to be made and kept; and every person shall be entitled to search that index and to have a certified copy of any entry in the Adopted Children Register subject to such terms, conditions and regulations as to payment of fees and otherwise as may be prescribed by regulations made under section 21 of this Act.

(4) The Registrar-General shall, in addition to the Adopted Children Register and the index thereof, keep such other registers and books, and make such entries therein, as may be necessary to record and make traceable the connection between any entry in the Registers of Births which has been marked "Adopted" pursuant to section 17 of this Act, and any corresponding entry in the Adopted Children Register; but the registers and books kept under this subsection shall not be, nor shall any index thereof be, open to public inspection or search, nor, except under an order of a court of competent jurisdiction, shall the Registrar-General furnish any person with any information contained in, or with any copy or extract from, any such registers or books.

17. Registration of adoptions

(1) Every adoption order made by the Court shall contain a direction to the Registrar-General to make in the Adopted Children Register an entry in the form set out in the First Schedule to this Act, and, subject to the provisions of subsection (2), shall specify the particulars to be entered under the headings in columns 2 to 6 of the First Schedule.

(2) For the purpose of compliance with the requirements of the subsection (1)–

- (a) where the precise date of the child's birth is not proved to the satisfaction of the Court, the Court shall determine the probable date of his birth and the date so determined shall be specified in the order as the date of his birth;
- (b) where the name or surname which the child is to bear after the adoption differs from his original name or surname, the new name or surname shall be specified in the order instead of the original;

and where the country of birth of the child is not proved to the satisfaction of the Court, the particulars of that country may, notwithstanding anything in that subsection, be omitted from the order and from the entry in the Adopted Children Register.

(3) Where upon any application to the Court for an adoption order in respect of a child, not being a child who has previously been the subject of an adoption order made by the Court under this Act, there is proved to the satisfaction of the Court the identity of the child with a child to whom an entry in the Register of Births relates, any adoption order made in pursuance of the application shall contain a direction to the Registrar-General to cause the entry in the Register of Births to be marked with the word "Adopted".

(4) Where an adoption order is made by the Court in respect of a child who has previously been the subject of an adoption order made by the Court under this Act, the order shall contain a direction to the Registrar-General to cause the previous entry in the Adopted Children Register to be marked with the word "Re-adopted".

(5) Where an adoption order is made by the Court, the Court shall cause the order to be communicated in the prescribed manner to the Registrar-General, and upon receipt of such communications the Registrar-General shall cause compliance to be made with the directions contained in the order both in regard to marking any entry in the Registers of Births with the word "Adopted" and in regard to making the appropriate entry in the Adopted Children Register.

18. Amendment orders and rectification of Registers

(1) The Court by which an adoption order has been made under this Act may, on the application of the adopter or of the adopted person, amend the order by the correction of any error in the particulars contained therein; and where an adoption order is so amended, the Court shall cause the amendment to be communicated in the prescribed manner to the Registrar-General; and any necessary correction of or addition to the Adopted Children Register shall be made accordingly.

(2) Where the adoption order was made before the date of the coming into

operation of this Act, the power of the Court under subsection (1) shall include power to amend the order—

- (a) by the insertion of the country of the adopted person's birth;
- (b) where the order does not specify a precise date as the date of the adopted person's birth, by the insertion of the date which appears to the Court to be the date or probable date of his birth;

and the provisions of subsection (1) shall have effect accordingly.

(3) Where an appeal against an adoption order is allowed, the Court which made the order shall give directions to the Registrar-General to cancel any marking of an entry in the Register of Births and any entry in the Adopted Children Register which was effected in pursuance of the order.

(4) Where the Registrar-General is notified by the Registrar-General or Administrator-General of any of the East African countries that an adoption order has been made by a court in such country under the law with regard to the adoption of children in force in such country in respect of a child to whom an entry in the Register of Births or the Adopted Children Register relates, the Registrar-General shall cause the entry to be marked "Adopted (Kenya)", "Adopted (Uganda)" or "Adopted (Zanzibar)" as the case may be, or, as the case may be, "Re-adopted (Kenya)", "Re-adopted (Uganda)" or "Re-adopted (Zanzibar)" and where, after an entry has been marked in pursuance of this subsection, the Registrar-General is notified that the adoption order has been quashed or that an appeal against an adoption order has been allowed, he shall cause the marking to be cancelled.

(5) A copy or extract of an entry in any register, being an entry the marking of which is cancelled under this section, shall be deemed to be an accurate copy if and only if both the marking and the cancellation are omitted therefrom.

PART V ADOPTION SOCIETIES (ss 19-20)

19. Restriction on making arrangements for adoption

(1) It shall not be lawful for any body of persons to make any arrangements for the adoption of a child unless that body is a registered adoption society.

(2) Any person who takes any part in the management or control of a body of persons which exists solely or in part for the purpose of making arrangements for the adoption of children and which is not a registered adoption society commits an offence and is liable upon conviction to a fine not exceeding four thousand shillings or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

(3) In any proceedings under this section, proof of things done or words written, spoken or published by any person taking part in the management or control of a body of persons, or in making arrangements for the adoption of children on behalf of the body shall be admissible as evidence of the purpose for which that body exists.

(4) This section shall not apply to arrangements for the adoption of a child made by officers of the Ministry responsible for social welfare acting in the course of their official duties.

20. Registration of adoption societies

(1) Subject to the provisions of this Part where application is made in the prescribed manner by or on behalf of an adoption society and there is furnished therewith the prescribed information relating to the activities of the society, the Minister may on payment by the society of such fees, not exceeding twenty shillings, as may be

prescribed, register the society under this part of this Act.

(2) The Minister shall not register an adoption society under this Part unless he is satisfied, by such evidence as he may reasonably require, that the society is a charitable association.

(3) The Minister may refuse to register an adoption society under this Part if it appears to him that—

- (a) the activities of the society are not controlled by a committee of members of the society who are responsible to the members of the society;
- (b) any person proposed to be employed, or employed, by the society for the purpose of making any arrangements for the adoption of children on behalf of the society is not a fit and proper person to be so employed;
- (c) the number of competent persons proposed to be employed, or employed, by the society for the purpose aforesaid is in the opinion of the authority, insufficient having regard to the extent of the activities of the society in connection with that purpose; or
- (d) any person taking part in the management or control of the society or any member of the society has been convicted of an offence under this Act or any rules or regulations made thereunder.

(4) The Minister may at any time cancel the registration of an adoption society on any grounds which would entitle him to refuse an application for the registration of the society or on the ground that the society is no longer a charitable association.

PART VI GENERAL PROVISIONS (ss 21-25)

21. Prohibition of certain payments

(1) Subject to the provisions of subsection (2) of this section—

- (a) any adopter or any parent or guardian of a child who receives any payment or other reward in consideration of the adoption of a child under this Act; or
- (b) any person who makes or gives or agrees to make or give to any adopter or any parent or guardian of a child any payment or other reward in consideration of the adoption of any child under this Act; or
- (c) any person who makes arrangements for the adoption of a child and receives or makes or gives or agrees to receive or make or give any payment or other reward in connection with the making of the arrangements,

commits an offence under this Act and is liable upon conviction to a fine not exceeding four thousand shillings or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

(2) The provisions of subsection (1) of this section shall not apply to any payments—

- (a) the making or receipt of which is sanctioned by the Court to which an application for an adoption order in respect of a child is made;
- (b) made by or on behalf of a registered adoption society in respect of the maintenance of a child who has been placed at the disposition of the society;
- (c) made to a registered adoption society by the parent or guardian of a child or by any other person in respect of the maintenance of the child so long as the child is not in the care and possession of a person who has adopted or proposes to adopt him, whether under an adoption order or otherwise, being payments made weekly and at a rate not exceeding such rate as may be prescribed.

22. Restriction upon advertisements

- (1) It shall be lawful for any advertisement to be published indicating—
 (a) that the parent or guardian of an infant desires to cause the infant to be adopted; or
 (b) that a person desires to adopt an infant; or
 (c) that any person is willing to make arrangements for the adoption of an infant.

(2) Any person who causes to be published or knowingly publishes an advertisement in contravention of the provisions of this section commits an offence under this Act and is liable upon conviction to a fine not exceeding one thousand shillings.

23. Power to make regulations

The Minister may make regulations for the better carrying out of the provisions and purposes of this Act, and, without prejudice to the generality of the foregoing, for either of the following purposes:

- (a) for regulating and maintaining supervision over the activities of registered adoption societies and persons or bodies of persons purporting to assist in or make arrangements for the adoption of children; and
- (b) for prescribing any matter authorised or required to be prescribed under this Act, except the matter to be prescribed by rules made by the Court under section II.

24. Exemption

The Minister shall have power, by an order, either retrospectively from the passing of this Act or prospectively, to exclude from the operation of all or any of the provisions of this Act the members of any race, tribe, or sect in Tanzania, or any part of such race, tribe or sect, to whom he may consider it impossible or inexpedient to apply such provisions, and the Minister shall also have power to revoke such order, but not so that the revocation shall have any retrospective effect and all orders and revocation made under this section shall be published in the *Gazette*.

25. Repeal of R.L. Cap. 14

[Repeals the Adoption of Infants Ordinance with savings.]

FIRST SCHEDULE **FORM OF ENTRY IN ADOPTED CHILDREN REGISTER** (Section 17)

1	2	3	4	5	6	7	8
No. of entry	Date and country of birth of child	Name and surname of child	Sex of child	Name and surname, address and occupation of adopter or adopters	Date of adoption order and description of Court by which made	Date of entry	Signature of officer deputy by Registrar-General to attest the entry

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SECOND SCHEDULE

[Omitted: Transitional provisions relating to the repeal of Cap. 14, the Adoption of Infants Ordinance, which preceded R.L. Cap. 335.]

ⁱCap. 108

ⁱⁱCap. 33

ⁱⁱⁱCap. 278