

[Chap2601]CHAPTER 26:01

ADOPTION OF CHILDREN

ARRANGEMENT OF SECTIONS

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13 of 1949

19 of 1957

22 of 1958

8 of 1963

21 of 1967

An Act to Provide for the Adoption of Children

[16TH JUNE 1949]

[Ch2601s1]1. Short title

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

[Ch2601s2]2. Power to make adoption orders

(1) Upon an application in the prescribed manner by any person desirous of being authorized to adopt an infant who has never been married, the court may, subject to this Act, make an order (in this Act referred to as "an adoption order") authorizing the applicant to adopt that infant.

(2) A person so authorized to adopt the infant and an infant authorized to be adopted are in this Act referred to as an "adopter" and an "adopted child" respectively, and an "infant" means a person under the age of twenty-one.

(3) Where an application for an adoption order is made by two spouses jointly, the court may make the order authorizing the two spouses jointly to adopt, but save as aforesaid no adoption order shall be made authorizing more than one person to adopt an infant.

[Ch2601s3]3. Restrictions on making adoption orders

(1) An adoption order shall not be made in any case where—

(a) the applicant is under the age of twenty-five years; or

(b) the applicant is less than twenty-one years older than the infant in respect of whom the application is made:

Provided that, where the applicant and the infant are within the prohibited degrees of consanguinity, it shall be lawful for the court, if it thinks fit, to make an order notwithstanding that the applicant is less than twenty-one years older than the infant.

(2) An adoption order shall not be made in any case where the sole applicant is a male and the infant in respect of whom the application is made is a female unless the court is satisfied that there are special circumstances which justify as an exceptional measure the making of an adoption order.

(3) An adoption order shall not be made except with the consent of every person or body who is a parent or guardian of the infant in respect of whom the application is made or who has the actual custody of the infant or who is liable to contribute to the support of the infant:

Provided that the court may dispense with any consent required by this subsection if satisfied that the person whose consent is to be dispensed with has abandoned or deserted the infant or cannot

be found or is incapable of giving such consent or, being a person liable to contribute to the support of the infant, either has persistently neglected or refused to contribute to such support or is a person whose consent ought, in the opinion of the court and in all the circumstances of the case, to be dispensed with.

(4) An adoption order shall not be made upon the application of one of two spouses without the consent of the other of them:

Provided that the court may dispense with any consent required by this subsection if satisfied that the person whose consent is to be dispensed with cannot be found or is incapable of giving such consent or that the spouses have separated and are living apart and that the separation is likely to be permanent.

(5) An adoption order shall not be made in favour of any applicant who is not resident in Malawi or in respect of any infant who is not so resident.

[Ch2601s4]4. Matters with respect to which court to be satisfied

The court before making an adoption order shall be satisfied—

(a) that 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; and

(b) that the order if made will be for the welfare of the infant, due consideration being for this purpose given to the wishes of the infant, having regard to the age and understanding of the infant; and

(c) that 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.

[Ch2601s5]5. Terms and conditions of order

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 adopted child such provision (if any) as in the opinion of the court is just and expedient.

[Ch2601s6]6. Effect of adoption order

(1) Upon an adoption order being made, all rights, duties, obligations and liabilities of the parent or parents, guardian or guardians of the adopted child, in relation to the future custody, maintenance and education of the adopted child, including all rights to appoint a guardian or 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 though the adopted child was a

child born to the adopter in lawful wedlock, and in respect of the same matters and in respect of the liability of a child to maintain its parents the adopted child shall stand to the adopter exclusively in the position of a child born to the adopter in lawful wedlock:

Provided that, in any case where two spouses are the adopters, such 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 adopted child in the same relation as they would have stood if they had been the lawful father and mother of the adopted child, and the adopted child shall stand to them respectively in the same relation as a child would have stood to a lawful father and mother respectively.

(2) An adoption order shall not deprive the adopted child of any right to or interest in property to which, but for the order, the child would have been entitled under any intestacy or disposition, whether occurring or made before or after the making of the adoption order, or confer on the adopted child any right to or interest in property as a child of the adopter and the expressions "child", "children" and "issue", where used in any disposition whether made before or after the making of an adoption order, shall not, unless the contrary intention appears, include an adopted child or children or the issue of an adopted child.

(3) Where an adopted child or the spouse or issue of an adopted child takes any interest in real or personal property under a disposition by the adopter, or where an adopter takes any interest in real or personal property under a disposition by an adopted child or the spouse or issue of an adopted child, any succession, legacy or other duty which becomes leviable in respect thereof shall be payable at the same rate as if the adopted child had been a child born to the adopter in lawful wedlock.

(4) For the purposes of this section "disposition" means an assurance of any interest in property by any instrument whether inter vivos or by will including codicil.

(5) For the purposes of any enactments relating to friendly societies, collecting societies and industrial assurance companies, which enable such societies and companies to insure money to be paid for funeral expenses, and which restrict the persons to whom money may be paid on the death of a child under the age of ten, the adopter shall be deemed to be the parent of the child; and where before the adoption order was made any such insurance had been effected by the natural parent of the child, the rights and liabilities under the policy shall by virtue of the adoption order be transferred to the adopter, and the adopter shall, for the purposes of the said enactments be treated as the person who took out the policy.

[Ch2601s7]7. Power to make interim orders

(1) Upon any application for an adoption order, the court may postpone the determination of the application and may make an interim order (which shall not be an adoption order for the purposes of this Act) giving the custody of the infant 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 and education and supervision of the welfare of the infant 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.

[Ch2601s8]8. Power to make subsequent order in respect of infant already subject to an order

An adoption order or an interim order may be made in respect of an infant who has already been the subject of an adoption order, and, upon any application for such further adoption order, the adopter or adopters under the adoption order last previously made shall, if living, be deemed to be the parent or parents of the infant for all the purposes of this Act.

[Ch2601s9]9. Jurisdiction and procedure

(1) The court having jurisdiction to make adoption orders under this Act shall be the High Court, or, at the option of the applicant, but subject to any Rules under this section, a court of a Resident Magistrate or of a magistrate of the first grade.

(2) Rules in regard to any matter to be prescribed under this Act and directing the manner in which applications to the court are to be made and dealing generally with all matters of procedure and incidental matters arising out of this Act and for carrying this Act into effect shall be made by the High Court.

Such Rules may provide for applications for adoption orders being heard and determined otherwise than in open court, and where the application is made to a subordinate court of the first grade, for the hearing and determination thereof in a juvenile court as defined by the Children and Young Persons Act. Cap. 26:03

(3) For the purpose of any application under this Act and subject to any Rules under this section the court shall appoint some person or body to act as guardian ad litem of the infant upon the hearing of the application with the duty of safeguarding the interests of the infant before the court.

[Ch2601s10]10. Restriction on payments

It shall not be lawful for any adopter or for any parent or guardian except with the sanction of the court to receive any payment or other reward in consideration of the adoption of any infant under this Act or for any person to make or give or agree to make or give to any adopter or to any parent or guardian any such payment or reward.

[Ch2601s11]11. Provisions as to existing de facto adoptions

Where at the date of the commencement of this Act any infant is in the custody of, and being brought up, maintained and educated by any person or two spouses jointly as his, her or their own child under any de facto adoption, and has for a period of not less than two years before such commencement been in such custody, and been so brought up, maintained and educated, the court may, upon the application of such person or spouses, and notwithstanding that the applicant is a male and the infant a female, make an adoption order authorizing him, her or them to adopt the infant

without requiring the consent of any parent or guardian of the infant to be obtained, upon being satisfied that in all the circumstances of the case it is just and equitable and for the welfare of the infant that no such consent should be required and that an adoption order should be made.

[Ch2601s12]12. Adopted Children Register

(1) The Registrar General of Births and Deaths shall establish and maintain at his office 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 no other entries.

(2) Every adoption order shall contain a direction to the Registrar General of Births and Deaths to make in the Adopted Children Register an entry recording the adoption in the form set out in the Schedule and (subject to the next following subsection) shall specify the particulars to be entered under the headings of that Schedule.

(3) For the purpose of complying with the requirements of the last preceding subsection—

(a) where the precise date of the infant'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; and

(b) where the name or surname which the infant 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.

(4) If upon any application for an adoption order there is proved to the satisfaction of the court—

(a) the date of the birth of the infant; and

(b) the identity of the infant with a child to which any entry or entries in the Register of Births relates,

the adoption order shall contain a further direction to the Registrar General of Births and Deaths to cause such birth, entry or entries in the Register of Births, to be marked with the word "Adopted", and to include in the entry in the adoption register recording the adoption the date stated in the order of the adopted child's birth in the manner indicated in the Schedule.

(5) The prescribed officer of the court shall cause every adoption order to be communicated in the prescribed manner to the Registrar General of Births and Deaths, and upon receipt of such communication the Registrar General of Births and Deaths shall cause compliance to be made with the direction contained in such order in regard both to marking any entry in the Register of Births and Deaths with the word "Adopted", and in regard to making the appropriate entry in the Adopted Children Register.

(6) 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 of Births and Deaths' Office shall, without any further or other proof of such entry—

(a) where the entry does not contain any record of the date of the birth of the adopted child be received as evidence of the adoption to which the same relates; and

(b) where the entry contains a record of the date of the birth of the adopted child shall be received not only as evidence of the adoption to which the same relates but also as evidence of the date of the birth of the adopted child to which the same relates in all respects as though the same were a certified copy of an entry in the Register of Births and Deaths.

(7) The Registrar General of Births and Deaths shall cause an index of the Adopted Children Register to be made and kept in his Office and every person shall be entitled to search such index and to have a certified copy of any entry in the Adopted Children Register in all respects upon, and subject to the same terms, conditions and regulations as to payment of fees and otherwise as are applicable under the Births and Deaths Registration Act in respect of searches in registers kept in the Registrar General of Births and Deaths' Office, and in respect of the supply from such office of certified copies of entries in the Register of Births and Deaths. Cap. 24:01

[Ch2601s13]13. Revision of particulars in Adopted Children Register

The court may, on application being made to it by, or on behalf of, a person in respect of whom an adoption order has been made prior to the coming into operation of the Adoption of Children (Amendment) Ordinance, 1958*, make an order directing that the particulars entered in the Adopted Children Register, and in the index thereto referred to in section 12 (7) relating to that person shall be amended to conform with the particulars which would have been entered therein if the adoption order had been made after the coming into operation of the said Ordinance, and the Registrar General of Births and Deaths shall comply with any such order.

SCHEDULE s. 12

No. of Entry

Date of Entry

Name of Adopted Child. (Enter name as stated in Adoption Order.)

.....

Sex of Adopted Child. (Enter sex as stated in Adoption Order.)

Name and Surname, Address and Occupation of Adopter or Adopters

.....

(Enter name, address and occupation as stated in Adoption Order.)

Date of Birth of Child

(Enter date of birth (if any) directed by the Adoption Order to be entered, but otherwise no entry.)

Date of Adoption Order and description of Court by which made

(Entry to be made as appearing in the Adoption Order.)

Signature of Officer deputed by Registrar General to attest the Entry.

SUBSIDIARY LEGISLATION

ADOPTION OF CHILDREN (SUBORDINATE COURTS) RULES

under s. 9

G.N. 136/1949

47/1968

75/1969

87/1980

1. Citation

These Rules may be cited as the Adoption of Children (Subordinate Courts) Rules.

2. Interpretation

In these Rules, unless the contrary intention appears—

“the Act” means the Adoption of Children Act;

“the court” means the subordinate court having jurisdiction under section 9 of the Act;

“the magistrate” means the magistrate of the court;

“the infant” means the child proposed for adoption;

“the petitioner” means the person or persons applying for the adoption.

3. Application to be by petition

An application for an adoption order shall be made by petition to the court intitled in the matter of the Act and in the matter of the infant. The proposed adopter shall be the petitioner. The

petition shall be in accordance with Form No. 1 in the Schedule with such variations as the circumstances may require.

4. Who are to be served

The petition shall be served on—

- (a) the parent or parents of the infant;
- (b) the guardian or guardians of the infant;
- (c) the person or persons having the actual custody of the infant;
- (d) the person or persons liable to contribute to the support of the infant,

but the magistrate may in his discretion dispense with service on any of those persons, and may in his discretion order the petition to be served on any other person.

5. Consents in writing

Every consent required under section 3 (3) and (4) of the Act shall be in writing and shall be in accordance with Form No. 2 in the Schedule and shall be attested by one witness.

6. Mode of service

Every petition or other document shall be served by being posted in a prepaid registered envelope addressed to the person to be served, unless the court otherwise directs, and shall at the expiration of such period of time as may to the court seem proper from the time of posting be deemed to have been served, unless the contrary appears. The service of every petition, notice or other document not served by the court shall be verified by affidavit, unless the magistrate otherwise directs.

7. Verification by affidavit

The petition shall be verified by affidavit paragraph by paragraph. There shall be exhibited to the affidavit all certificates, consents and other documents proper for proving the allegations in the petition. Evidence shall be by affidavit, unless the magistrate thinks proper to direct evidence to be given orally, which he shall have power to do.

8. Guardian ad litem

The infant shall be a respondent to the petition. As soon as practicable after the filing of the petition, the magistrate shall appoint a guardian ad litem to the infant, and shall thereupon cause the petition to be served on the guardian ad litem.

9. Notice of hearing

When a guardian ad litem has been appointed, the magistrate shall appoint a day for the hearing of the petition, and shall give notice to all parties, including the guardian ad litem, of the day so

appointed. The notice shall be served seven clear days before the day appointed for the hearing and shall be in accordance with Form No. 3 in the Schedule.

10. Secrecy

All documents filed in the court shall be confidential, and shall be kept secret. Every petition and every application shall be heard and determined in camera.

11. Copies of order

No copy or duplicate of any order made by the court shall be given to or served upon any person other than the petitioner and the Registrar General of Births and Deaths, unless the High Court or the magistrate otherwise directs.

12. Duty of guardian ad litem

It shall be the duty of the guardian ad litem to investigate as fully as possible all the circumstances of the infant and the petitioner, and all other matters relevant to the proposed adoption with a view to safeguarding the interests of the infant, and, in particular, it shall be his duty to include in his investigation the following questions:

- (a) whether the statements in the petition are true;
- (b) whether any payment or other reward in consideration of the adoption has been received or agreed upon and whether it is consistent with the welfare of the infant;
- (c) whether the means and status of the petitioner are such as to enable him to maintain and bring up the infant suitably, and what right to or interest in property the infant has;
- (d) what insurance, if any, has been effected on the life of the infant;
- (e) whether it is desirable for the welfare of the infant that the court should be asked to make an interim order or to impose in making an adoption order any particular terms or conditions or to require the petitioner to make any particular provision for the infant.

13. Information to be confidential

The guardian ad litem and, where a body of persons is appointed guardian ad litem, any officer or agent of that body, shall regard all information obtained in the course of the investigation or otherwise in relation to the matter as confidential, and shall not divulge any part of it to any person save as may be necessary for the proper execution of his duty.

14. Presence of parties

The magistrate may refuse to make an adoption order or an interim order unless all parties including the infant attend before him, but he shall have power in his discretion to dispense with the

attendance of any party including the infant, and the magistrate may direct that any of the parties shall attend separately and apart from the others.

15. Previous applications

If it appears that the petitioner has made a previous application under the Act in respect of the same infant and that such application has been refused, the court shall not make an adoption order or an interim order unless satisfied that there has been a substantial change in the circumstances since the previous application.

16. Cases more fit for High Court

If owing to special circumstances an application appears to the magistrate to be more fit to be dealt with by the High Court, the magistrate may, on that ground expressly, refuse to make an order.

17. Supervision of infant

An interim order may provide for the supervision of the infant by the guardian ad litem or otherwise as the magistrate may think advisable.

18. Sealed copy of order to Registrar General

Upon the making of an adoption order the magistrate shall forward a sealed copy thereof to the Registrar General of Births and Deaths in a registered postal envelope marked "Confidential".

19. Costs

The magistrate may make such orders as to costs as he shall think fit, and may direct that all the costs of a petition under the Act shall be borne and paid by the petitioner.

20. Safe custody of documents

The magistrate shall cause all petitions, consents and other documents relating to any application or order made under the Act to be kept in a place of special security.

21. Subordinate court practice to apply

Subject to these Rules, the practice and procedure for the time being obtaining in subordinate courts shall apply to proceedings under the Act, so far as they are applicable.

22. Schedule Forms

The Forms in the Schedule shall be used in applications and for orders made under the Act, and, in any case where no Form is included in the Schedule, the Forms in use in the court may be adopted with such variations as may be necessary.

PETITION

In the Subordinate Court of

Holden at

In the Matter of the Adoption of Children Act, and

In the Matter of A.B. of a (here state whether the child is male or female) infant.

To the Magistrate of the said Court.

The Petition of C.D., of (and E.D. his wife, of the same address)—

SHOWETH—

1. Your Petitioner(s) is(are) desirous of adopting the said A.B. under the provisions of the Adoption of Children Act.

2. Your Petitioner(s) is(are) resident at

3. Your Petitioner C.D. is unmarried (was married to your Petitioner E.D. at on the day of 19).

4. Your Petitioner C.D. is by occupation a

5. Your Petitioner C.D. is years of age and your Petitioner E.D. is years of age.

6. Your Petitioner(s) has(have) resident with him(them) the following persons, namely,

7. Your Petitioner(s) C.D. (and E.D.) is(are) related to the said A.B. as follows— (or, Your Petitioner(s) is not (are not nor is either of them) related to the said A.B.).

8. The said A.B. is—

(a) of the sex;

(b) unmarried;

(c) a child of and both of

(d) a citizen of Malawi (or as the case may be)

(e) years of age, having been born on the day of 19....., Search has been made in the Register of Births of the Registrar General; the birth of the said A.B. was (not) registered (at entry No. dated);

(f) resident at

(g) now in the actual custody of of

(h) under the guardianship of of

(i) entitled to the following property, namely,
.....

9. of

(and of) is(are) liable to contribute to the support of the said A.B.

10. The said A.B. has not been the subject of an adoption order or an application or petition for an adoption order, save that (state order and application or petition, if any).

11. Your Petitioner(s) undertakes(undertake), if an order is made on this Petition, to make for the said A.B. the following provision, namely,

Your Petitioner(s) will, if required, secure the above provision by bond or otherwise as the Court may require.

12. Consents to this Petition have been obtained from the following persons, namely—

- (a) (parents).
- (b) (guardian).
- (c) (actual custodian of infant).
- (d) (person or persons liable to contribute to support of infant).
- (e) (spouse of petitioner).

13. Your Petitioner(s) has not (have not nor has either of them) received or agreed to receive and no person has made or given or agreed to make or give to the Petitioner(s) (or either of them) any payment or reward in consideration of the adoption of the said A.B. (except as follows, viz.—)

14. It is proposed that the costs of this Petition shall be provided for as follows, namely—

Your Petitioner(s) prays(pray)—

(1) That an order for the adoption of the said A.B. by your Petitioner(s) may be made in pursuance of the Adoption of Children Act, with all necessary directions;

(2) That the costs of this Petition may be provided for as above mentioned or otherwise as the Court may direct;

(3) Such further or other order as the nature of the case may require.

NOTE.—It is intended to serve this Petition on

Form No. 2 r. 5

CONSENT TO ADOPTION ORDER

(Title as in Petition)

And

In the Matter of a Petition by of for an order for the adoption of

..... the said infant.

I, the undersigned of being—

- (a) the father of the said infant;
- (b) the mother of the said infant;
- (c) guardian of the said infant;
- (d) a person having the actual custody of the said infant;
- (e) a person liable to contribute to the support of the said infant;
- (f) the spouse of the petitioner, (Strike out all but such one of these descriptions as is applicable)

hereby state that I understand the nature and effect of the adoption for which application is made (and that in particular I understand that the effect of the order will be permanently to deprive me of my parental rights). And I hereby consent to the making of an adoption order in favour of the petitioner(s).

In Witness whereof I have signed this consent on the

day of 19....., at

(Signature).....

Signed in the presence of—

(Signature of witness)

(Address)

(Description)

Form No. 3 r. 9

FORM OF NOTICE OF DAY APPOINTED FOR HEARING OF PETITION

(Title as in Petition)

To of

Take notice that a Petition has been presented in the above matter praying that an order may be made for the adoption of the above-named by of and that of has been appointed guardian ad litem to the said infant, and that the said Petition will be heard at a court to be held at on the day of 19....., at o'clock in the noon.

.....

Magistrate

Form No. 4 r. 22, G.N. 75/1969

FORM OF ADOPTION ORDER

In the Subordinate Court of

Holden at

In the Matter of the Adoption of Children Act, and

In the Matter of A.B. of a (here state whether the child is male or female) infant.

(to be used where the name or surname which the infant is to bear after the adoption does not differ from his original name or surname: section 12 (2A) (b)).

In the Matter of X.Y. (formerly A.B.) of a (here state whether the child is male or female) infant.

(to be used where the name or surname which the infant is to bear after the adoption differs from his original name or surname).

Upon reading the Petition of (here state the address and occupation of the petitioner), (and) and upon reading the affidavits of and and the exhibits thereto (refer to the affidavits filed in the matter and the exhibits thereto) and upon hearing and the evidence of (state names and addresses of witnesses examined orally).

And being satisfied that the allegations in the said Petition are true and being also satisfied with the undertaking of the said (and) as to the provision to be made for the above-named infant and with the securing thereof and being further satisfied that it is for the benefit of the said infant that (s)he should be adopted by the said and and that all the requirements of the Adoption of Children Act have been complied with.

It is ordered that the said (and) be authorized to adopt the said infant.

(And the following payment or reward is sanctioned, viz)

And it is ordered that the parties to these proceedings other than the said (and) do recover their costs against the said (and), and that the said (and) do pay the amount of the said costs to this Court within fourteen days hereof.

And it is directed that the Registrar General of Births and Deaths shall make an entry recording this adoption in The Adopted Children Register in the form set out in the Schedule to the said Act.

And it having been proved to the satisfaction of the Magistrate that the said infant was born on the day of 19....., and is identical with to whom an entry numbered and made on the day of 19....., in the Register of Births for relates, it is further directed that the Registrar General shall cause such birth entry or entries to be marked with the word "adopted" and shall include the above date of birth in the entry recording the adoption in the manner indicated in the Schedule to the said Act.

NOTE:An adoption order, or copy, sent to the Registrar General of Births and Deaths is required to be drawn up on paper of size A4 and to have a margin, to be left blank, not less than twenty-five millimetres wide on the left side of the face of the order, and a similar margin on the right side of the reverse, if any. G.N. 87/1980

Form No. 5 r. 22

FORM OF INTERIM ORDER

(Title as in Petition)

Upon reading, etc.As in adoption order.And upon reading, etc.And upon hearing, etc.And the evidence, etc.

And being satisfied that the allegations in the said Petition are true and also being satisfied with the undertaking of the said (and) as to the provision to be made for the above-named infant and with the security thereof and being further satisfied that it is for the benefit of the said infant that (s)he should for the present be in the custody of the said (and) and that all the requirements of the Adoption of Children Act have been complied with.

The following payment or reward is sanctioned, viz.—

And it is ordered that the determination of the Petition be postponed and that the custody of the said infant be given to the said (and) for the period of from the date of this order by way of a probationary period (and subject to the supervision of of who shall be at liberty at all reasonable times to visit and interview the infant alone and to make all necessary inquiries as to the comfort and well-being of the infant).

Guardian ad litem

And as regards costs it is ordered that

And any of the parties including the guardian ad litem of the said infant to be at liberty to apply as they may be advised.

ADOPTION OF CHILDREN (HIGH COURT) RULES

under s. 9

G.N. 51/1968

93/1969

1. Citation

These Rules may be cited as the Adoption of Children (High Court) Rules.

2. Interpretation

In these Rules, unless the contrary intention appears—

“the court” means the High Court;

“Form” means Form in the Schedule to these Rules;

“the infant” means the child proposed for adoption;

“the Judge” means any Judge of the High Court and includes the Chief Justice;

“the petitioner” means the person or persons applying for the adoption;

“the Registrar” means the Registrar of the High Court.

3. Application to be by petition

An application for an adoption order shall be made by petition to the court intitled in the matter of the Act and in the matter of the infant. The proposed adopter shall be the petitioner. The petition shall be in accordance with Form 1 with such variations as the circumstances may require.

4. Who are to be served

The petition shall be served on—

- (a) the parent or parents of the infant;
- (b) the guardian or guardians of the infant;
- (c) the person or persons having the actual custody of the infant;
- (d) the person or persons liable to contribute to the support of the infant,

but the Judge may in his discretion dispense with service on any of those persons, and may in his discretion order the petition to be served on any other person.

5. Consents in writing

Every consent required under section 3 (3) and (4) of the Act shall be in writing and shall be in accordance with Form 2 and shall be attested by one witness.

6. Mode of service

Every petition or other document shall be served by being posted in a prepaid registered envelope addressed to the person to be served, unless the court otherwise directs, and shall at the expiration of such period of time as may to the court seem proper from the time of posting be deemed to have been served, unless the contrary appears. The service of every petition, notice or other document not served by the court shall be verified by affidavit, unless the Registrar otherwise directs.

7. Verification by affidavit

The petition shall be verified by affidavit paragraph by paragraph. There shall be exhibited to the affidavit all certificates, consents and other documents proper for proving the allegations in the petition. Evidence shall be by affidavit, unless the Judge thinks proper to direct evidence to be given orally, which he shall have power to do.

8. Guardian ad litem

The infant shall be a respondent to the petition. As soon as practicable after the filing of the petition, the Judge shall appoint a guardian ad litem to the infant, and shall thereupon cause the petition to be served on the guardian ad litem.

9. Notice of hearing

When a guardian ad litem has been appointed, the Registrar shall appoint a day for the hearing of the petition, and shall give notice to all persons who must be served in accordance with rule 4, the petitioner, and the guardian ad litem, of the day so appointed. The notice shall be served seven clear days before the day appointed for the hearing and shall be in accordance with the Form 3, unless the Registrar for good reason otherwise directs.

10. Secrecy

All documents filed in the court shall be confidential, and shall be kept secret. Every petition and every application shall be heard and determined in chambers.

11. Copies of order

No copy or duplicate of any order made by the court shall be given to or served upon any person other than the petitioner and the Registrar General of Births and Deaths, unless the Judge otherwise directs.

12. Duty of guardian ad litem

It shall be the duty of the guardian ad litem to investigate as fully as possible all the circumstances of the infant and the petitioner, and all other matters relevant to the proposed adoption with a view to safeguarding the interests of the infant, and, in particular, it shall be his duty to include in his investigation the following questions—

(a) whether the statements in the petition are true;

(b) whether any payment or other reward in consideration of the adoption has been received or agreed upon and whether it is consistent with the welfare of the infant;

(c) whether the means and status of the petitioner are such as to enable him to maintain and bring up the infant suitably, and what right to or interest in property the infant has;

(d) what insurance, if any, has been effected on the life of the infant;

(e) whether it is desirable for the welfare of the infant that the court should be asked to make an interim order or to impose in making an adoption order any particular terms or conditions or to require the petitioner to make any particular provision for the infant.

13. Information to be confidential

The guardian ad litem shall regard all information obtained in the course of the investigation or otherwise in relation to the matter as confidential, and shall not divulge any part of it to any person save as may be necessary for the proper execution of his duty.

14. Presence of parties

The Judge may refuse to make an adoption order or an interim order unless all persons who must be served in accordance with rule 4, the petitioner, and the infant attend before him, but he shall have power in his discretion to dispense with the attendance of any such person, and may direct that any such person shall attend separately and apart from the others.

15. Previous applications

If it appears that the petitioner has made a previous application under the Act in respect of the same infant and that such application has been refused the court shall not make an adoption order or an interim order unless satisfied that there has been a substantial change in the circumstances since the previous application.

16. Cases more fit for magistrate's court

If owing to special circumstances an application appears to the Judge to be more fit to be dealt with by a magistrate's court, the Judge may, on that ground expressly, refuse to make an order, and may transfer the hearing of the petition to a magistrate's court specified in the order of transfer.

17. Supervision of infant

An interim order may provide for the supervision of the infant by the guardian ad litem or otherwise as the Judge may think advisable.

18. Sealed copy of order to Registrar General

Upon the making of an adoption order the Registrar shall forward a sealed copy thereof to the Registrar General of Births and Deaths in a registered postal envelope marked "Confidential".

19. Costs

The Judge may make such orders as to costs as he shall think fit.

20. Safe custody of documents

The Registrar shall cause all petitions, consents and other documents relating to any application or order made under the Act to be kept in a place of special security.

21. High Court practice to apply

Subject to these Rules, the practice and procedure for the time being obtaining in the High Court shall apply to proceedings under the Act, so far as they are applicable.

22. Forms

The Forms in the Schedule shall be used in applications and for orders made under the Act, and, in any case where no Form is included in the Schedule, the Forms in use in the court may be adopted with such variations as may be necessary.

SCHEDULE

Form 1

ADOPTION OF CHILDREN ACT r.3, G.N. 93/1969

(Cap. 26:01)

PETITION

In the High Court of Malawi.

In the Matter of the Adoption of Children Act, and

In the Matter of A.B. of a (here state whether the child is male or female) infant.

The Petition of C.D., of (and E.D. his wife, of the same address)

SHOWETH—

1. Your Petitioner(s) is(are) desirous of adopting the said A.B. under the provisions of the Adoption of Children Act.

2. Your Petitioner(s) is(are) resident at

3. Your Petitioner C.D. is unmarried (was married to your Petitioner E.D. at on the day of 19.....).

4. Your Petitioner C.D. is by occupation a

5. Your Petitioner C.D. is years of age and your Petitioner E.D. is years of age.

6. Your Petitioner(s) has(have) resident with him(them) the following persons, namely,

.....

7. Your Petitioner(s) C.D. (and E.D.) is(are) related to the said A.B. as follows— (or, Your Petitioner(s) is not (are not nor is either of them) related to the said A.B.).

8. The said A.B. is—

- (a) of the sex;
- (b) unmarried;
- (c) a child of and both of;
- (d) a citizen of Malawi (or as the case may be).....;
- (e) years of age, having been born on the day of 19, Search has been made in the Register of Births of the Registrar General; the birth of the said A.B. was (not) registered (at entry No. dated);
- (f) resident at
- (g) now in the actual custody of of
- (h) under the guardianship of of
- (i) entitled to the following property, namely,

9. of (and of) is(are) liable to contribute to the support of the said A.B.

10. The said A.B. has not been the subject of an adoption order or an application or petition for an adoption order, save that (state order and application or petition, if any).

11. Your Petitioner(s) undertakes(undertake), if an order is made on this Petition, to make for the said A.B. the following provision, namely,

Your Petitioner(s) will, if required, secure the above provision by bond or otherwise as the Court may require.

12. Consents to this Petition have been obtained from the following persons, namely—

- (a) (parents).
- (b) (guardian).
- (c) (actual custodian of infant).

(d) (person or persons liable to contribute to support of infant).

(e) (spouse of Petitioner).

13. Your Petitioner(s) has not (have not nor has either of them) received or agreed to receive and no person has made or given or agreed to make or give to the Petitioner(s) (or either of them) any payment or reward in consideration of the adoption of the said A.B. (except as follows, viz.—)

14. It is proposed that the costs of this Petition shall be provided for as follows, namely—

Your Petitioner(s) prays(pray)—

(1) That an order for the adoption of the said A.B. by your Petitioner(s) may be made in pursuance of the Adoption of Children Act, with all necessary directions;

(2) That the costs of this Petition may be provided for as above mentioned or otherwise as the Court may direct;

(3) Such further or other order as the nature of the case may require.

NOTE:—It is intended to serve this Petition on

.....

Form 2

ADOPTION OF CHILDREN ACT r. 5

(Cap. 26:01)

CONSENT TO ADOPTION ORDER

(Title as in Petition)

And

In the Matter of a Petition by of

for an order for the adoption of the said infant.

I, the undersigned of being—

(a) the father of the said infant;

(b) the mother of the said infant;

(c) guardian of the said infant;

(d) a person having the actual custody of the said infant;

- (e) a person liable to contribute to the support of the said infant;
- (f) the spouse of the petitioner,

(Strike out all but such one of these descriptions as is applicable)

hereby state that I understand the nature and effect of the adoption for which application is made (and that in particular I understand that the effect of the order will be permanently to deprive me of my parental rights). And I hereby consent to the making of an adoption order in favour of the petitioner(s).

In Witness whereof I have signed this consent on the day of 19....., at

(Signature)

Signed in the presence of—

(Signature of witness)

(Address)

(Description)

Form 3

ADOPTION OF CHILDREN ACT r. 9

(Cap. 26:01)

FORM OF NOTICE OF DAY APPOINTED FOR HEARING OF PETITION

(Title as in Petition)

To of

Take notice that a petition has been presented in the above matter praying that an order may be made for the adoption of the above-named by of and that of has been appointed guardian ad litem to the said infant, and that the said petition will be heard in Chambers at the High Court at on the day of 19..... at o'clock in the noon.

.....

Registrar

Form 4

ADOPTION OF CHILDREN ACT r. 22, G.N. 93/1969

(Cap. 26:01)

FORM OF ADOPTION ORDER

In the High Court of Malawi.

In the Matter of the Adoption of Children Act, and

In the Matter of A. B. of a (here state whether the child is male or female) infant.

(to be used where the name or surname which the infant is to bear after the adoption does not differ from his original name or surname: section 12 (2A) (b)).

In the Matter of X.Y. (formerly A.B.) of a (here state whether the child is male or female) infant.

(to be used where the name or surname which the infant is to bear after the adoption differs from his original name or surname).

Upon reading the Petition of

(here state the address and occupation of the petitioner),

(and) and upon reading the affidavits of and and the exhibits thereto (refer to the affidavits filed in the matter and the exhibits thereto) and upon hearing and the evidence of (state names and addresses of witnesses examined orally).

And being satisfied that the allegations in the said Petition are true and being also satisfied with the undertaking of the said (and) as to the provision to be made for the above-named infant and with the securing thereof and being further satisfied that it is for the benefit of the said infant that (s)he should be adopted by the said and and that all the requirements of the Adoption of Children Act have been complied with.

It is ordered that the said (and) be authorized to adopt the said infant.

(And the following payment or reward is sanctioned, viz)

And it is ordered that the parties to these proceedings other than the said (and) do recover their costs against the said (and), and that the said (and) do pay the amount of the said costs to this Court within fourteen days hereof.

And it is directed that the Registrar General of Births and Deaths shall make an entry recording this adoption in The Adopted Children Register in the form set out in the Schedule to the said Act.

And it having been proved to the satisfaction of the Judge that the said infant was born on the day of 19....., and is identical wit to whom an entry numbered and made on the day of 19....., in the Register of Births for relates, it is further directed that the Registrar. General shall cause such birth entry or entries to be marked with the word "adopted" and shall include the above date of birth in the entry recording the adoption in the manner indicated in the Schedule to the said Act.

NOTE:

An adoption order, or copy, sent to the Registrar General of Births and Deaths is required to be drawn up on paper of foolscap folio size, thirteen inches by eight inches, and to have a margin, to be left blank, not less than one inch wide on the left side of the face of the order, and a similar margin on the right side of the reverse, if any.

Form 5

ADOPTION OF CHILDREN ACT

FORM OF INTERIM ORDER

(Title as in Petition)

Upon reading, etc.As in adoption order.And upon reading, etc.And upon hearing, etc.And the evidence, etc.

And being satisfied that the allegations in the said petition are true and also being satisfied with the undertaking of the said (and) as to the provision to be made for the above-named infant and with the security thereof and being further satisfied that it is for the benefit of the said infant that (s)he should for the present be in the custody of the said (and) and that all the requirements of the Adoption of Children Act have been complied with.

The following payment or reward is sanctioned, viz—

And it is ordered that the determination of the petition be postponed and that the custody of the said infant be given to the said (and) for the period of from the date of this order by way of a probationary period (and subject to the supervision of of who shall be at liberty at all reasonable times to visit and interview the infant alone and to make all necessary inquiries as to the comfort and well-being of the infant).

Guardian ad litem

And as regards costs it is ordered that And any of the parties including the guardian ad litem of the said infant to be at liberty to apply as they may be advised.