Federal Court  Cour fédérale

Date: 20101103

Docket: IMM-1251-10

Citation: 2010 FC 1079

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, November 3, 2010

PRESENT: The Honourable Madam Justice Bédard

BETWEEN:

JEAN-PIERRE KENNE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act), of a decision of the Immigration Appeal Division of the Immigration and Refugee Board of Canada (the IAD), dated February 5, 2010, dismissing the applicant's appeal of a decision of the immigration officer of the Canadian Embassy in Abidjan, rejecting his application for permanent residence under the family class for the Cameroonian applicant's three adoptive children.

Background

[2] The applicant is a Canadian citizen from Cameroon. On October 16, 2006, by a judgment of the court of first instance in Douala, he adopted, through a process of simple adoption, the three children of his friend who had died in 2003. The three children were born to two different mothers.

[3] On April 2008, the applicant took steps to sponsor and obtain visas for the three children for permanent residence in Canada under the family class.

[4] On May 21, 2008, one of the applicant's adopted daughters, Yogho Carita, who was 16 years old at the time, received a letter from an officer of the visa office of the Canadian Embassy in Abidjan, informing her that the permanent residence applications for the three children might be rejected, as the certificates of simple adoption could not be accepted, and that they were required to file certificates of full adoption, to which the mothers had to consent.

[5] The applicant took the required action and filed with the Embassy a judgment declaring the full adoption of the children, rendered on July 2, 2008, by the court of first instance in Douala.

[6] On April 24, 2009, the senior immigration officer at the Canadian Embassy in Abidjan rejected the application for permanent residence visas for the children on the grounds that they did not meet the requirements of membership in the family class. The officer determined that the adoption was neither valid nor genuine and was entered into primarily for the purpose of acquiring a status or privilege in relation to the Act.

[7] The applicant appealed this decision to the IAD. The appeal was dismissed. Although the immigration officer had rejected the visa application on two grounds, namely, the legal invalidity of the adoptions and their lack of genuineness, the IAD decided to review the first ground only. During the appeal process, the respondent added another ground for rejecting the visa application, namely, that the applicants' adoption did not have the effect of severing the pre-existing legal parent-child relationship with their biological parents.

The impugned decision

[8] The IAD held that the applicant had failed to establish that the children's adoption was legally valid and met the requirements of subsection 3(2) and paragraph 117(3)(*d*) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the Regulations). The IAD held that the applicants' adoption did not comply with the Cameroonian *Civil Code* and that it did not sever the pre-existing legal parent-child relationship with the biological parents.

Issues

[9] This application for judicial review raises the two following issues:

1) Did the IAD breach the duty of procedural fairness by not holding a hearing before rendering its decision?

2) Did the IAD err in its assessment of the legal validity of the applicant's adoption of the children and whether it complies with the Regulations?

Analysis

Standard of review

[10] The first issue is one of procedural fairness and must be reviewed according to the standard of correctness (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190; *Canada (Minister of Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 SCR 339; *Sketchley v. Canada (Attorney General)*, 2005 FCA 404, [2005] F.C.J. No. 2056).

[11] The second issue involves establishing the content and interpretation of Cameroonian law, and the case law recognizes that such issues constitute questions of fact that must be reviewed according to the standard of reasonableness (*Xiao v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 195, [2009] 4 F.C.R. 510; *Kisimba v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 252, [2008] F.C.J. No. 321; *Wai v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 364, [2007] F.C.J. No. 500; *Canada (Minister of Citizenship and Immigration) v. Saini*, 2001 FCA. 311, [2001] F.C.J. No. 1577; *Dunsmuir and Khosa*).

[12] In applying the standard of reasonableness, the Court must be deferential and not substitute its own opinion for that of the decision-maker. The role of the Court was established in *Dunsmuir*, at paragraph 47:

> . . . A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

1) Did the IAD breach its duty of fairness by not holding a hearing before rendering its decision?

[13] The IAD held that the applicant had failed to establish that the children's adoption complied with Cameroonian law and had severed the pre-existing legal parent-child relationship with the biological parents. As mentioned above, in arriving at this decision, the IAD interpreted the provisions of the Cameroonian *Civil Code* and set aside the adoption judgment and legal opinions filed by the applicant.

[14] The applicant claims that a hearing would have enabled him to explain the apparent contradictions between the judgment and the provisions of the *Civil Code* and that it was not open to the IAD to interpret Cameroonian law without hearing witnesses who could have enlightened it with respect to the proper interpretation to be given to those documents. The applicant also submits that in the absence of evidence, the IAD committed factual errors, particularly in its finding that the children lived with their mothers.

[15] The respondent, on the other hand, submits that the applicant had ample opportunity to express his point of view in writing and that his right to be heard was therefore respected.

[16] He states that the burden was on the applicant to provide any necessary evidence or arguments in support of his position.

[17] The IAD is not required to hold a hearing. Section 25 of the *Immigration Appeal Division Rules*, SOR/2002-30, reads as follows:

Proceeding in writing	**Procédures sur pièces**
Instead of holding a hearing, the Division may require the parties to proceed in writing if this would not be unfair to any party and there is no need for the oral testimony of a witness.	La Section peut, au lieu de tenir une audience, exiger que les parties procèdent par écrit, à condition que cette façon de faire ne cause pas d'injustice et qu'il ne soit pas nécessaire d'entendre des témoins.

[18] In *Williams v. Canada (Citizenship and Immigration)*, 2008 FC 655, [2008] F.C.J. No. 832, the Court wrote that there was no breach of procedural fairness if the applicant knew of the case to be decided by the IAD and had been given an opportunity to submit evidence and arguments related to the issue and if the IAD based its decision on all the materials before it.

[19] In this case, the applicant knew what issue was before the tribunal and had been given the opportunity to file all the evidence and arguments he wanted in support of his claims. During the proceedings, the IAD gave him extensions and even allowed him to file exhibits after the deadlines for doing so had passed. Moreover, the applicant seemed satisfied with the procedures followed by the IAD and never requested a hearing. I am therefore of the view that no unfairness resulted from the IAD's decision to proceed in writing.

[20] Therefore, there is no reason for the Court to intervene in the IAD's decision on this ground.

2) Did the IAD err in its assessment of the legal validity of the applicant's adoption of the children and whether it complies with the Regulations?

[21] I find that although the IAD considered the right questions, it erred in its assessment of the evidence.

[22] It is worth reviewing the legislative and regulatory provisions that the IAD had to apply in deciding the appeal before it. Subsection 12(1) of the Act states that a foreign national may be selected as a member of the "family class" on the basis of his or her relationship as a family member—such as a child—of a Canadian citizen or permanent resident.

[23] According to subsection 117(2) of the Regulations, a child who was adopted when he or she was under the age of 18 shall not be considered a member of the family class on the basis of his or her relationship to a Canadian citizen or permanent resident unless the adoption was in the best interests of the child within the meaning of the Hague Convention on Adoption.

[24] Subsection 117(3) of the Regulations sets out the following criteria to be considered to determine whether the adoption was in the best interests of the child:

Best interests of the child	Intérêt supérieur de l'enfant
(3) The adoption referred to in subsection (2) is considered to be in the best interests of a child if it took place under the following circumstances:	(3) L'adoption visée au paragraphe (2) a eu lieu dans l'intérêt supérieur de l'enfant si les conditions suivantes sont réunies :
(*a*) a competent authority has conducted or approved a home study of the adoptive	*a*) des autorités compétentes ont fait ou ont approuvé une étude du milieu familial des

parents;

(*b*) before the adoption, the child's parents gave their free and informed consent to the child's adoption;

(*c*) the adoption created a genuine parent-child relationship;

(*d*) the adoption was in accordance with the laws of the place where the adoption took place;

(*e*) the adoption was in accordance with the laws of the sponsor's place of residence and, if the sponsor resided in Canada at the time the adoption took place, the competent authority of the child's province of intended destination has stated in writing that it does not object to the adoption;

(*f*) if the adoption is an international adoption and the country in which the adoption took place and the child's province of intended destination are parties to the Hague Convention on Adoption, the competent authority of the country and of the province have stated in writing that they approve the adoption as conforming to that Convention; and

(*g*) if the adoption is an international adoption and either the country in which the adoption took place or the child's province of

parents adoptifs;

b) les parents de l’enfant ont, avant l’adoption, donné un consentement véritable et éclairé à l’adoption de l’enfant;

c) l’adoption a créé un véritable lien affectif parent-enfant entre l’adopté et l’adoptant;

d) l’adoption était, au moment où elle a été faite, conforme au droit applicable là où elle a eu lieu;

e) l’adoption est conforme aux lois du lieu de résidence du répondant et, si celui-ci résidait au Canada au moment de l’adoption, les autorités compétentes de la province de destination ont déclaré par écrit qu’elle ne s’y opposaient pas;

f) s’il s’agit d’une adoption internationale et que le pays où l’adoption a eu lieu et la province de destination sont parties à la Convention sur l’adoption, les autorités compétentes de ce pays et celles de cette province ont déclaré par écrit qu’elles estimaient que l’adoption était conforme à cette convention;

g) s’il s’agit d’une adoption internationale et que le pays où l’adoption a eu lieu ou la province de destination ne sont pas parties à la Convention sur l’adoption, rien n’indique que

intended destination is not a party to the Hague Convention on Adoption, there is no evidence that the adoption is for the purpose of child trafficking or undue gain within the meaning of that Convention.	l'adoption projetée a pour objet la traite de l'enfant ou la réalisation d'un gain indu au sens de cette convention.

[25] Also, subsection 3(2) of the Regulations specifies that adoption must mean an adoption that "creates a legal parent-child relationship and severs the pre-existing legal parent-child relationship."

[26] In this case, the IAD had to address whether the adoption of the three children was valid under Cameroonian law and verify whether it had severed the pre-existing parent-child relationship.

[27] The IAD concluded that the children's adoption did not respect the Cameroonian *Civil Code* and that, accordingly, it did not meet the requirements of paragraph 117(3)(*d*) of the Regulations. It then concluded that the adoption did not sever the legal parent-child relationship with their biological families and that it therefore did not meet the definition of adoption set out in subsection 3(2) of the Regulations.

[28] It is important to summarize the *Civil Code* provisions governing adoption to appreciate the evidence in the record and the IAD's reasoning.

[29] Title 8 of the Cameroonian *Civil Code* governs two specific filiation regimes: adoption and adoptive legitimation.

[30] The regime of adoption is governed by sections 343 to 367 of the Cameroonian *Civil Code*, which set out the following parameters for its application:

- The qualities required of the adopters are set out in article 344;
- The consent of the parents or the surviving parent of an adopted child is required if the adoptee is a minor (art. 347);
- The consent of the parent or parents may be provided in the deed of adoption or before a notary or justice of the peace (art. 348);
- The adopter and the child he or she proposes to adopt, if the latter is older than 16, must appear before a notary or a justice of the peace to [TRANSLATION] "execute an instrument of their respective consents" (art. 358);
- The deed of adoption must be homologated by the court of the domicile of the adopter. The court is seized of the application to which a copy of the deed of adoption is attached (art. 360);
- The court seized of the motion to homologate verifies whether all of the legal conditions have been satisfied, whether there are justifiable reasons for the adoption and whether the adoption will be beneficial to the adoptee (art. 361);
- <u>The adoptee remains with his or her biological family and retains all of his or her rights, but the adopter is the sole individual invested with paternal authority over the adoptee and is the sole individual who can consent to his or her marriage (art. 351);</u>
- The adoptee and the adopter have a mutual obligation of support (art. 355);
- The rights of succession of the adoptee are set out in articles 356 and 357;
- The adoption may be revoked by a judgment of the court for serious reasons (art. 367).

[Emphasis added.]

[31] Article 352 of the Cameroonian *Civil Code* provides an important exception to the principle set out in the first paragraph of article 351 that the adoptee remains with his or her biological family and retains all of his or her rights. It reads as follows:

> [TRANSLATION]
> Notwithstanding the provisions of paragraph 1 of the preceding article, the court, in homologating the deed of adoption, may, at the adopter's request, if the adoptee is less than 21 years of age, decide after investigation that the adoptee shall cease to be a member of his or her biological family, subject to the prohibitions to marriage set out in articles 161, 162, 163 and 164 of this Code. In that case, no acknowledgement subsequent to the adoption shall be admitted; furthermore, the adopter or the surviving adopter may designate a testamentary tutor.

[32] Adoptive legitimation is governed by articles 368 to 370 of the Cameroonian *Civil Code*. This type of filiation is permitted only for children less than five years of age who have been abandoned by their parents or whose parents are deceased or unknown. Article 369 states that this type of adoption is irrevocable, and article 370 provides that the child ceases to belong to his or her biological family and has the same rights and obligations as if he or she had been born of the marriage.

[33] The reasoning on which the IAD based its conclusion that the children's adoption was not valid under Cameroonian law can be summarized as follows:

- Cameroonian law, and more specifically the Cameroonian *Civil Code*, does not provide for the type of adoption (full adoption) claimed by the applicant and his adopted children;
- The legal opinions filed by the applicant contradict the provisions of the Cameroonian *Civil Code*;

- The children could only have been adopted under one or the other of the adoption regimes provided for by the *Civil Code*: the general adoption regime or adoptive legitimation;
- Full adoption is a concept that implies the severing of the pre-existing parent-child relationship. As only adoptive legitimation severs the pre-existing parent-child relationship, the full adoption claimed by the applicant as most closely analogous to adoptive legitimation;
- If the adoption judgment must be considered adoptive legitimation, it is not valid under the Cameroonian *Civil Code*, which provides that adoptive legitimation is restricted to children less than five years old who have been abandoned by their parents or whose parents are deceased;
- The adoption is not valid under the general adoption regime either because several requirements of the *Civil Code* were not respected in this case.

[34] One of the premises of the IAD's reasoning is its conclusion that the Cameroonian *Civil Code* does not provide for full adoption, in other words, that this adoption regime does not exist. Also, a court could not have found that the three children had been adopted under this regime.

[35] While it is accurate to state that the Cameroonian *Civil Code* does not expressly mention full adoption, the documentary evidence filed by the applicant supported the existence and validity of full adoption in Cameroonian law, particularly in light of the exception set out in article 352 of the *Civil Code*. The two legal opinions filed by the applicant confirmed the existence of full adoption and its basis in the *Civil Code*.

[36] The IAD set aside the legal opinions on the grounds that they contained statements that contradicted the Cameroonian *Civil Code*. The IAD wrote the following:

> [13] . . . Note that Cameroonian lawmakers do not use the terms "simple" adoption or "full" adoption, but instead refer to "adoption" and "adoptive legitimation." Only the Cameroonian trial court referred in its decision to "full" adoption, whilst the appellant's counsel, basing his arguments on the opinions of two Cameroonian lawyers, submits that a distinction must be made in Cameroonian law between "simple" adoption and "full" adoption, without however demonstrating that these terms exist in the Cameroonian *Civil Code*.
>
> . . .
>
> [20] Moreover, elements of the opinions expressed by the two Cameroonian lawyers contradict the Cameroonian *Civil Code*. The panel notes that the first opinion asserts that sections 343–367 gave rise to full adoption which results in the severing of any parent child relationship with the birth family, while citing in the same paragraph section 351 of the Cameroonian *Civil Code*, which states that [translation] "the adopted child remains in his birth family and maintains all this rights therein." The second opinion asserts that [translation] "the only point in common between the two notions is with respect to the interest of the child and of the severing of ties with his birth family," which is contrary to the provisions of section 351 of the Cameroonian *Civil Code*.

[37] The respondent submits that it was for the IAD to interpret the evidence submitted regarding Cameroonian law and to decide how much weight to attribute to the legal opinions, particularly given that there was no evidence that the lawyers who issued the opinions were experts in the law of adoption.

[38] I agree that it is for the IAD to assess the evidence regarding the existence and meaning of the Cameroonian law, but its assessment of the evidence and interpretation of the legislative provisions must be reasonable.

[39] I also agree that the evidence does not establish that Mr. Tétang and Mr. Tsapi are experts in the law of adoption. However, in assessing the weight to be given to legal opinions on the scope of foreign legislative provisions and in deciding whether to set them aside, it is important to understand them. With respect, the above-cited passages from the IAD decision do not accurately reflect the opinions issued by the two lawyers and demonstrate that the IAD understood neither the arguments of the two lawyers, nor the scope of article 352 of the *Civil Code*.

[40] I shall begin by addressing the first opinion issued by Mr. Tétang.

[41] Contrary to what the IAD has stated, Mr. Tétang does not claim that full adoption has been created by articles 343 to 367. Rather, he states that full adoption is a particular form of adoption that results from the application of the exception set out in article 352 of the *Civil Code*, which has different effects on the pre-existing parent-child relationship.

[42] In his opinion, Mr. Tétang begins by explaining the difference between adoptive legitimation and full adoption. He then explains how full adoption fits into the overall scheme of the general adoption regime. He writes as follows:

> **[TRANSLATION]**
> **II- Isn't full adoption or adoptive legitimation possible only for children less than five (5) years old who are orphaned, abandoned or whose filiation is unknown?**
>
> It is important to begin by noting that this question is poorly formed, as it confuses two separate legal concepts: full adoption and adoptive legitimation.
>
> Both concepts are covered in Book I, Title 8 of the Cameroonian *Civil Code*, entitled: **"ON ADOPTION AND ADOPTIVE LEGITIMATION"**.

This title is divided into two separate chapters, the first governing adoption and the second adoptive legitimation.

The chapter names alone indicate that full adoption and adoption by legitimation are distinct legal concepts and that, accordingly, one cannot use the terms full adoption and adoption by legitimation as though they were synonyms;

As the impugned judgment does not deal with adoptive legitimation, this concept can be dealt with briefly before we switch the focus to full adoption.

. . .
As the impugned judgment does not deal with adoptive legitimation, the sole reason for enumerating its conditions is to enable us to understand how it differs from full adoption.

B- ON FULL ADOPTION

Full adoption is a form of adoption, the judicial creation of a parent-child relationship between two persons, a feature of which is that the child severs all pre-existing ties with the original family and is assimilated as a legitimate child into the adoptive family.

The basis and conditions for adoption are found in sections 343, 344(1); 346(2); 347(1); 350(2); and 351(1) of the Cameroonian *Civil Code* and full adoption is covered by these provisions in combination with article 352 of the *Code*.

. . .
ON THE AGE OF THE ADOPTEE
. . .
Article 352, which governs full adoption, provides an explicit age requirement for the adoptee: *"the court, in homologating the deed of adoption, may, at the adopter's request, if the adoptee is less than 21 years of age, decide after investigation that the adoptee shall cease to belong to his or her biological family"*.

This text dictates the age of a child eligible for full adoption, setting it at less than twenty-one (21) years, or up to twenty years.

B- ON THE EXISTENCE OF THE ADOPTEE'S PARENTS

For the adoption of a sixteen-year-old minor child, the above-mentioned article 347 requires the consent of his or her parents if they are living; this simply means that the adoptee is neither an orphan, nor abandoned, nor of unknown filiation.

Adoption is therefore open to children whose parents are known and even living, subject to the requirement that if the adoptees are minor, they must consent to their adoption.

> **CONCLUSION**
>
> In light of the above, the following should be noted:
>
> – Judgment No. 854/5, rendered in July 2008, is valid and genuine, having been rendered by a court of competent jurisdiction in accordance with Cameroonian law;
>
> – In Cameroonian law, full adoption is distinct from adoptive legitimation and, accordingly, the conditions for each are different;
>
> – Full adoption is possible in Cameroon for twenty-year-old minor children, in other words, from birth to age twenty;
>
> – The fact that the children have established filiation and belong to a known family with living parents is not an obstacle to their full adoption;
>
> The judgment does not mention the exception set out in article 352 of the *Civil Code* applies, and the statement that the children are henceforth members of the Kenne family does not necessarily imply that the pre-existing parent-child relationships have been severed. The evidence indicates that the children have maintained ties with their biological families, as they continue to bear their mothers' names and continue to live with her.
>
> [Emphasis added.]

[43] The second legal opinion, issued by Mr. Tsapi, also confirms the existence of full adoption in Cameroonian law and the fact that it is distinct from adoptive legitimation, as well as the fact that [TRANSLATION] "the only two features that the two concepts share are the best interests of the child and the severing of the pre-existing parent-child relationship with the biological parents." The IAD held that this opinion contradicted article 351 of the *Civil Code*. However, the statement does not contradict article 352, which creates an exception to article 351.

[44] I am of the view that the opinions issued by the two lawyers are well written and offer a perfectly reasonable interpretation of the provisions of the Cameroonian *Civil Code* governing adoption. This interpretation also complies with the definition of full adoption cited by the IAD itself:

> . . . On this matter, the dictionary, *Le Petit Robert*, states that unlike "simple adoption," which leaves ties with the birth family intact, "full adoption" results in [translation] "the severing of ties with the birth family."

Moreover, in addition to these two legal opinions, several other exhibits in the documentary evidence filed indicate that the concept of full adoption exists in Cameroonian law:

- In his letter dated May 21, 2008, the Canadian Embassy officer himself mentioned that deeds of simple adoption are not acceptable, and that deeds of full adoption must be filed, with the biological mothers abandoning their parental rights.
- The notarized deeds regarding the consent of the mothers clearly refer to the full adoption of the children and the consequences of this type of adoption. Each of the mothers stated in the notarized deeds that she [TRANSLATION] "expressly consented to full adoption." Each notarized deed also includes the following statement: [TRANSLATION] "She also confirmed that she had been informed by the undersigned Notary of the legal effects of the intended full adoption that would confer upon her children a filiation that will substitute for their natural filiation."
- The concepts of simple and full adoption are also raised in the adoption judgments. Although the first judgment of the children's adoption in 2006 declared their simple adoption, the July 2008 judgment declared their full adoption.

[45] The IAD based its conclusion on its own interpretation of the *Civil Code* provisions and rejected any documentary evidence based on an opposing interpretation. It is entirely clear that the IAD did not understand the meaning of the legal opinions. I therefore find that, in this case, the IAD's findings, which were based solely on its own understanding, and which failed to take into

account all of the documentary evidence filed, do not fall within the range of possible, acceptable outcomes with respect to the evidence.

[46] I also find that the IAD committed an additional error in holding that the judge had not applied the exception set out in article 352 of the *Civil Code* in pronouncing the adoption and that the adoption did not have the effect of severing the children's pre-existing parent-child relationships. The IAD wrote the following:

> . . . The panel is convinced that the type of adoption described in sections 343–367 of the Cameroonian *Civil Code* does not sever "any pre-existing legal parent child relationship," since sections 351, 356, 357, and 367 state the opposite. Moreover, in fact, the appellant failed to demonstrate that the adoption he carried out in Cameroon severed any pre-existing legal parent child relationship, especially since the type of adoption enacted by Cameroonian lawmakers in sections 343–367, on which the appellant is basing his arguments, is revocable, and since section 351 could not be more clear in that it states that [translation] "the adopted child remains in his birth family and maintains all his rights therein," in comparison to "adoptive legitimation," which results in the child no longer belonging to his birth family (section 370). Nowhere does the Cameroonian judgment of homologation indicate that, at the adoptive parent's request, he decided to apply the exception set out in section 352 of the Cameroonian *Civil Code*, so that the applicants would no longer belong to their respective birth families and no longer maintain all their rights therein. The fact that the applicants continued and still continue to use the surnames of their birth families is but one obvious demonstration of this. The fact that the applicants continued after the adoption and still continue to live with their respective mothers is a further clear demonstration of this. The fact that the decision states that the adopted children belong to the Kenne family (the appellant's family) does not necessarily mean that the applicants no longer belong to their birth families and maintain all their rights therein.
>
> [Emphasis added.]

[47] This passage demonstrates once again that the IAD's reasoning rests entirely on the fact that it does not recognize the full adoption. Moreover, its statement that there was no indication in the

judgment that the judge had applied the exception in article 352 was unreasonable in light of the evidence.

[48] The adoption judgment must be understood in the context of all the documentary evidence filed.

[49] First, the judgment on full adoption was a follow-up to the judgment of October 16, 2006, which declared the simple adoption of the three children and made no mention of their birth family. Such a mention would have served no purpose, however, as article 351 of the *Civil Code* sets out that the adoptee remains a part of his or her family and retains all his or her rights.

[50] However, the children's mothers' deeds of consent filed with the court of first instance in support of the application for full adoption expressly state that the mothers were informed of the substitution of filiation that would result from the full adoption.

[51] The judgment dated July 8, 2008, expressly refers to the consent of the mothers and states that it is a declaration of the children's full adoption. This constitutes recognition that the court applied the exception set out in article 352 of the *Civil Code* and that the effect of this adoption was that set out in that article, namely, that the adoptees would cease to be members of their biological families. The judge goes even further by expressly referring to the substitution of the children's pre-existing parent-child relationships in the same terms as those used in article 352. For convenience, I shall reproduce the text of article 352:

> [TRANSLATION]
> Art. 352 – Notwithstanding the provisions of paragraph 1 of the preceding article, the court, in homologating the deed of adoption, may, at the adopter's request, if the adoptee is less than 21 years of age, decide after investigation that the adoptee shall cease to be a member of his or her biological family, subject to the prohibitions to marriage set out in articles 161, 162, 163 and 164 of this Code. In that case, no acknowledgement subsequent to the adoption shall be admitted; furthermore, the adopter or the surviving adopter may designate a testamentary tutor.
>
> [Emphasis added.]

[52] The judgment of July 2, 2008, of the court of first instance in Douala includes the following statements:

> [TRANSLATION]
> . . .
> Whereas by Act No. 168 of the index of Florence NJONGUE ETAME, Notary in Douala, Madam Widow Miyer YOGHO née NKEM Comfort, mother of YOGHO Carita and YOGHO Stanislas NKEM, expressed her consent to this full adoption;
>
> Whereas by Act No. 169 of the index of Florence NJONGUE ETAME, Notary in Douala, Madam YOGHO Ziporah, mother of young DGOUKOUO Ginette, approved the application for full adoption by Mr. KENNE Jean Pierre;
>
> Whereas during the public hearing Madam Widow Miyer YOGHO née NKEM Comfort and Madam YOGHO Ziporah both reiterated their consent to the adoption of the above-named children;
>
> Whereas according to the Bamiléké custom, the custom of the parties, which is not incompatible with the provisions of the written law, states that adoption is permissible if it offers the adoptee better living conditions and if his or her parents or surviving parent consents thereto;
>
> Whereas the submissions and exhibits indicated that there are valid grounds for the full adoption requested by KENNE Jean Pierre, which offers clear benefits for the adoptees;

> Whereas there is reason to declare the children YOGHO Carita, YOGHO Stanislas NKEM and DGOUKOUO Ginette, adopted under the regime of full adoption by KENNE Jean Pierre;
>
> Whereas KENNE Jean Pierre has requested that the children so adopted henceforth be members of the KENNE family;
>
> Whereas it is appropriate to allow this application;
>
> . . .
>
> The application is allowed, and it is hereby declared that the children YOGHO Carita, born on October 11, 1991 in Douala; YOGHO Stanislas NKEM, born on March 21, 1996 in Douala and DGOUKOUO Ginette, born July 14, 1991 in Douala, are adopted by KENNE Jean Pierre under the regime of full adoption.
>
> It is hereby declared that the children so adopted shall henceforth be members of the KENNE family;
>
> [Emphasis added.]
>
> . . .

[53] I find that the errors committed by the IAD are determinative because they completely vitiate its reasoning.

[54] For all of these reasons, the application for judicial review is allowed. The parties raised no important question warranting certification, and no such question shall be certified.

JUDGMENT

THE COURT ORDERS that the application for judicial review be allowed and that the file be returned to the IAD for redetermination by a different member. No question is certified.

"Marie-Josée Bédard"
Judge

Certified true translation
Francie Gow, BCL, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1251-10
STYLE OF CAUSE:	JEAN-PIERRE KENNE v. MCI
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	October 14, 2010
REASONS FOR JUDGMENT:	The Honourable Madam Justice Bédard
DATED:	November 3, 2010

APPEARANCES:

Amina Chakibi	FOR THE APPLICANT
Sylviane Roy	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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John H. Sims, Q.C. Deputy Attorney General of Canada	FOR THE RESPONDENT