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MOST EXCELLENT DOCTOR JUDGE OF LAW OF THE FAMILY DIVISION OF THE ADMINISTRATIVE REGION OF SÃO JOSÉ DOS CAMPOS – SP

Distributed in response to adoption process: 1.322 / 05

MARTIN BOYLE, British citizen, divorced, bearer of the ID card RNE n º V 110734 - R, born on 01/ 09/ 62, son of Peter Boyle e Mary Rose, passport number 301476519, resident and domiciled in England at 7, The Barges, Tower Parade, Whitstable, Kent, CT5 2BF (right of attorney attached), comes respectfully into your presence based on articles 4ª; 202, and following, 247, among others, of the Civil Code to propose **JUDICIAL REVIEW TO INVALIDATE THE CONCESSION OF PROVISIONAL GUARDIANSHIP AND INVALIDITY OF THE SENTENCE OF ADOPTION, INVALIDITY OF THE ADOPTION AND INVALIDITY OF THE REMOVAL OF PARENTAL POWERS ON THE GROUNDS OF FAILINGS ACCORDING TO ORDINARY PROCESS.** In respect of:

JOSÉ AUGUSTO DOS SANTOS SÁ, Brazilian, married, chemical technician, bearer of ID no: RG n º 11. 055. 6847 – 8 IPF / RJ e CPF 964. 002. 427 – 91;

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MARA SILVIA OLIVEIRA REZENDE, Brazilian, journalist, bearer of ID no: RG n º 17. 080. 639 SSP / SP e CPF 072. 858. 968 – 02;

REBECA REZENDE SÁ, younger than 18 years, relatively incapable at 17 years, art. 4º, I, and 1.634, V, of CC in force; 8º of the CPC, born on 23July 1992, in the fl.s 125, Livro A – 489, of the Register of Births of the 1st subdistrict of the administrative region of São José dos Campos, who must be **ASSISTED** by her parents **JOSÉ AUGUSTO DOS SANTOS SÁ** and **MARA SILVIA OLIVEIRA REZENDE,** mentioned above, all the defendants being domiciled at Rua Tubarão, 300, 5º andar, apto 53, bloco A, Parque Residencial Aquarius, Comarca de São José dos Campos, according to the facts and background explained here:

I – OF THE APROPRIACY OF THE AÇÃO DECLARATÓRIA DE NULIDADE ON THE GROUNDS OF FAILINGS IN THE SUMMONS:

The lawsuit aims to obtain from the court the declaration of invalidity of the ruling of Provisional Guardianship of Rebeca by José Augusto of 01/ 04/ 2005, fl.s 74 and 74 reverse, exhibited (prolatada) in the Guardianship document n º 1.948 / 04; and invalidity of the sentence of adoption, invalidity of the adoption and invalidity of the removal of parental powers over Rebeca by José carried out in respect of the biological father, Martin Boyle in fl.s 85 a 89, of 7th June 2006, document 1.322 / 05, which went through the channels in the Children and Young People's Division of the Family Court in this administrative region.

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The invalidity should be granted on the grounds of the failings in the summons and by the lack of consent of the biological father Martin Boyle, the accused José having prosecuted the acts without fulfilling the procedures in relation to Martin Boyle, which prevented justice on the grounds of irredemible failings. Martin ended up being summonsed hastily by public newspaper announcement through the bad faith of the accused who alleged loss of contact and the fact that Martin was a foreigner and resident abroad to justify his uncertain whereabouts, but on the occasion in which the accused put forward their lawsuits they were maintaining contact with Martin and hid the lawsuit from him. The court ended up being misled by the error with the public announcement, the present petitioner having suffered damages through the unfavourable outcome of the case because of the adoption and loss of parental power over Rebeca, not having had the opportunity to defend himself under the constitutional scrutiny of Full Defence and of Counter Argument.

In similar cases, jurisprudence e teaching do not diverge on the admission of Judicial Review of Invalidity of Sentence (Ação Declaratória de Nulidade de Sentença)as a remedy, considering that the judgement delivered under failings of summons is invalid even when passed. *Viz.*:

> *"PROCEDURAL – RESCINDING – INVALIDITY OF SUMMONS - "PROCESSUAL - RESCISÓRIA - NULIDADE DA CITAÇÃO – DEMAND THAT IT RAN BY DEFAULT (WITHOUT THE KNOWLEDGE OF THE PERSON SUMMONSED) INAPROPRIATENESS OF THE LEGAL PROCESS – EXTINCT LEGAL PROCESS, BUT DECLARED THE*

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PROCESS RESCINDED - PRECEDENTE DO STJ – SUMMARY OF 07 OF THE COURT – FIRST PARAGRAPH OF ART. 158 OF THE STATUTE OF CILDREN AND ADOLESCENTS.

The lack or invalidity of summons does not preclude the whole process being defective, turning ineffective later acts , including the judgement which, in this manner, does not pass through judgement.

"Intentada a rescisória, não será possível julgá-la procedente, por não ser o caso de rescisão. Deverá ser, não obstante, declarada a nulidade do processo, a partir do momento em que se verificou o vício". TJ/SC, rel. Des. Amaral Silva, Ação Rescisória 812, J. 16.08.94, v.u.

"Invalidity of judgement. A judicial review invalidating a judgement is admissible on the grounds of the summonsing of the accused being invalid, independent of the judgement of the ação rescisória (STJ, 3ª, T. Resp 26041 – 7 SP, rel. Min. Nilson Naves, v.u., j. 9.11.1993, Bol AASP 2076/737).In the same sense: STF, RE. 97589, Rel. Min Moreira Alves, RTJ 107/778; RT 609/59; RJTJSP 114/274, 114/360; Teresa Arruda Alvim

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Wambier –Invalidity of legal process and judgement, 4ª Ed, 1998, p. 225, 362 e 368; Nelson Luiz Pinto – Ação de Usucapião, 2ª Ed. 1.992, PP. 80/82. Admitting ação rescisória: RT 635/283; RJTJSP 114/434". CIT. NOTAS CPC, NELSON NERY, CASUÍSTICA ART. 4ª, RT, 10ª ED. 2008, PÁG. 173.

"Invalidity of summons. Accused Revel. It can be alleged in ação declaratória or through terms (CPC 741, I, or refuting the carrying out of the judgement – CPC 475 – L, enlarged upon by the L. 11. 232 / 245). Os terms of CPC 741, I, sometimes have a declaratory character (absence of summons), sometimes breaking down, judicial review (nulidade de citação)."Work and page. Idem.

"Invalidity of summons. Inexistence. Querela Nullitatis. A thesis of querela nullitatispersists in Brazilian positive law, which implicitly says that the invalidity of a judgement can be declared in judicial review in that, without summons, it is worth speaking in relation to the judicial process neither constituting nor developing validly. Nor, on the other hand, is the judgement carried out, being at any time able to be declared invalid in procedure with this objective with hinderances to its execution, if it were the case (STJ, 3º T. Resp. 12586 – SP, rel. Min. Waldemar Zveiter, j. 8.10.1991, DJU 4.11.191, p. 15684). Obra idem pág. 474, casuística art. 219.

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Notas Theotônio Negrão, verbete art. 4: 15; pág. 123; 39ª Ed. Saraiva: *"Cabe a ação declaratória: (...) para declaração de nulidade de citação (JTA 106/248);*

Obra idem, notas art. 4º: 14ª: "*Súmula 7 do TJSC Processos que correu à revelia): A ação declaratória é meio processual hábil para se obter a declaração de nulidade do processo que tiver ocorrido à revelia do réu por ausência de citação ou por citação nulamente feita" (RT 629/206).*

Obra idem pág. 319, verbete art. 214:2ª, in verbis: "Nula a citação, não se constitui a relação processual e a sentença não transita em julgado, podendo a qualquer tempo, ser declarada nula, em ação com esse objetivo, ou em Embargos à Execução, se o caso (CPC, art. 741, I) (RSTJ 24/439) e "*Na ação declaratória de nulidade, por falta ou vício de citação, o juiz decidirá se ocorreu ou não à correta citação do réu na ação anterior; se foi citado validamente, será improcedente a ação declaratória da inexistência da relação jurídica resultante da sentença na ação anterior; se nula a citação, será renovado o processo da demanda anterior, a partir da "in jus vocatio" (RSTJ 8 / 231; v. p. 251, voto do Min. Athos Carneiro).*

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Art. 214:2b, obra idem, pág. 319: "*A falta ou nulidade de citação torna imprescritível a faculdade de se desfazer a viciada relação processual". (RT 648/71).*

In Manuel Temático de Direito, Dagma Paulino dos Reis, pág. 1.317, 5º edição, Del Rey, verbete Ação Rescisória: "*A nulidade de citação, por ser absoluta, pode ser decretada em embargos à execução ou em Ação Declaratória, não sendo necessário o ajuizamento da Ação Rescisória para tal fim (Resp 138725, 7.11.1997, 1ª T. STJ rel. Mln. Garcia Vieira, DJU 16.12.98.p. 38);*

"Se o que se busca em juízo é anular a sentença por falta de citação, cabível à ação de anulação, que apreciará a nulidade da decisão, não em sua estrutura mesma, mas como ato jurídico em geral, desnecessário o uso da via rescisória (Ap. 97172 – 1, 23/6/88, 5ª CC TJSP, rel. Des. Silveira Netto, RT 639/69);

"Para a hipótese prevista no art. 741, I, do atual CPC – que é a falta ou nulidade de citação, havendo revelia – persiste no direito brasileiro a querela nullitatis, o que implica dizer que a nulidade da sentença, nesse caso, pode ser declarada em ação declaratória de nulidade independentemente do prazo para propositura da ação rescisória, que, em rigor, não é cabível para essa hipótese (RE 97589, 17/11/82, TP STF, rel. Min. Moreira Alves, RTJ 107/778);

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II – OF THE FACTUAL AND PROCEDURAL CONTEXT OF THE GUARDIANSHIP AND ADOPTION:

O accused José Augusto having married the accused Mara Silvia proposed in relation to Martin Boyle legal proceedings for Provisional Guardianship and for Adoption of the minor, Rebeca, fruit of the extinct marriage of Martin and Mara, having obtained by judement the approval of both, depriving the father Martin of his father's powers and obtaining the unilateral adoption of Rebeca.

According to the summing up manifested in the judgement, the magistrate in approving the cases of Adoption and Guardianship considered the alleged disappearance of the father since the birth of the adopted to represent abandonment of Rebeca. He explained that he had not attempted to contact the child, using as evidence disinterest in the same and that he had failed to fulfil the powers inherent in familiar power, the violation of the familiar duties of the biological father becoming obvious, having as a consequence the loss of familiar power.

But the tone of the lawsuit which is now proposed rests on two premises which are mutually fulfilling.

The first rests on the invalidity of summons by public announcement. The summons by public announcement of the biological father was the cause of the inducement to error of the court by the accused. Despite knowing the whereabouts of the person being

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looked for, they declared that he was in an unknown location to deprive him of any defence. For his part, the latter contradicts the accused never having abandoned the adopted. He was repeatedly prevented from seeing her and hindered from looking after her by the mother and accused Mara since they separated.

At the time of the cases Mara was being looked for judicially by the accusor in the act of separation and divorce so that he could have full access to the adopted through the intervention of the judicial system; having in mind that Mara had been systematically hindering him from seeing the adopted for years to the point that he went to Interpol and other national and international organs.

Proof that the accused were looked for by the accusor during the time of the summons by public announcement emerge robustly from the personal summons of the the counsel of José by the divorce court, Dra. Maria José Resende (who is also the mother of Mara and grandmother of the adopted) that she hand over the current address of Mara so that the biological father could exercise his visiting rights in accordance with the terms agreed to in the separation

This happened when the summons by public announcement was in full process in the children's court against the accusor. Instead of handing it over to the Capital court and allow the visits, she preferred to give up the act, hiding Mara's address from the Family Court of the Capital and Martin's contacts and hand it over to the Children's court of São José, creating the odd situation that we are now trying to remedy through a declaration of invalidity of judgement.

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Mara herself, instead of alerting the court as to the viability of personal contact of Martin with the Children's court and the Adoption proposal to the Central court (veja – se que a patrona representaria os interesses da constituinte como que se ela própria estivesse praticando os atos em juízo - e aqui muito pior, porque a patrona era avó da adotada, mãe de Mara e sogra de José) Mara and José preferred to maintain the summons by public announcement with the continuation of the procedural hindering of Martin.

We shall see often:

- **Documents attached in the blue section.**

The documents attached in the blue section refer to the Guardianship. The guardianship was requested in November 2003 in the administrative region of Itu, having been enacted under nº 783 / 03.

The accused José Augusto managed to obtain gusrdianship of Rebeca, daughter of his wife Mara with Martin, with whom he had contracted nuptuals in December 2002. He argued that the biological father was English and that he had returned to England when Rebeca was 4 months old leaving no more news and failing to give any support or assistence, Rebeca having been brought up with the help of her maternal grandparents, there having been a demand for child support with an arrest warrant outstanding.

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José Augustoalso mentioned, in short: that life with Mara and Rebeca was tranquil, structured in bonds of affection, allowing the minor to develop in all aspects; as he worked in Petrobras, he posessed rights which Rebeca could benefit from as long as they could prove a paternal link with him; that it should be considered that he was already living with the minor and that he nurtured care for her, being that for her part Rebeca received the treatment of a father and that the relationship between both dated from 1997 when Rebeca was 5 years old. He ended by saying that he was looking for the denial of father's rights and Adoption, but that in that instance he was looking for Guardianship for insurance reasons, the mother being in accord with the request.

There was a judgement for the summons of the mother of the minor, Mara being summonsed in the sdministrative region of Itu. A social and psychological evaluation was carried out, which did not take place in the administrative region of Itu, having been pleaded in São José dos Campos, the actual place of domicile of the family.

The case was then sent to São José dos Campos, under the terms of art. 147, of the Statute of Children, having been observed by the official prosecutor, at the beginning of December 2004, the absence of the summons of the accused resulting in the court's decision that the former be **emendada sob pena de indeferimento**. José petitioned through his counsel and mother-in-law, Dra. Maria José, in a petition of January 2005, que o residence of the accused (Martin) be ignored, the Public Ministry having requested the summons by public announcement **sem prejuízos de expedição de ofícios** on 16 February 2005.

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The decision on summons by public announcement emerged in fl.s 71, de 23 of February 2005, whose publication occured in the DOESP of 16 March 2005 – fl.s 87. Yet, a writ summonsing the father at the old home of the couple was issued using information collected from the offices of the Inland Revenue and turned up nothing.

The Provisional Guardianship was granted to the petitioner by a decision of 1st April 2005 for 90 days; the term of Guardianship was signed on 7th April 2005. The decision to extend the Guardianship for another 180 days was made on 19 / 07/ 2005.

- **Documents in the red section:**

The start of the Adoption dates from 18 July 2005 In it, under the counsel of Dra. Maria J. O Rezende, José in addition to repeating his motivation presented in the Guardianship cried out to the summons by public announcement of Martin as a form of shortening the measures, assuming that Martin had been summonsed by public announcement for child support.

The judgement on the summons by public announcement was finalised on 2 December 2005. The announcement having been published in DOESP on 12 September 2005 for a period of 30 days by written defence.

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The time ran "in albis", Martin being defended by a Curador by writ on 3 January 2006.

Renewal of Guardianship for another 180 days by decision of 24/ 02/ 2006.

Pre-hearing, debates e judgement on 22 May 2006, Martin being represented by the Curadora Especial. The statement of the minor and the agreement of the mother were collected.

The decision on adoption was finally made on 7th June 2006, the father having been deprived of his father's rights with the adoption of the adopted by Jose Augusto, having as its basis abandonment and disinterest of the biological father.

However, Martin never abandoned the adopted. Worse. At the time of the cases the accused knew his whereabouts and had effective ways of verifying them. They opted to impede the correct composition of the procedure, forging a false context through summons by public announcement.

Martin's story is an epic struggle of a father to see his beloved daughter. It unveils the despair of a father who for 17 years has struggled for his visiting rights to Rebeca, having been excluded from her life by the accused Mara through the obstacles that she has thrown in his way.

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The present case correct these unfortunate events where the mother of the adopted created biased situations designed to result in the loss of parental rights by the father, who ended up prevented from enjoying the growth and development of his daughter without any legal means of defence.

Brazilian justice must give the opportunity for a "REAL" defence to the father because even if parental rights are lost it will be a just and legal consequence, but the opportunity to make good his loss cannot be denied under any hypothesis under penalty of being considered illegal.

In fraudulently hiding his whereabouts and the possibilities of putting him in touch with the Children's Court, forging a public summons, Mara and José envisaged shortening the legal route illegally, envisaging a favourable judgement which they certainly would not have obtained if Martin had had the sacred opportunity of rel defence, arguing in a valid and regular procedure. His loss is real because the Curador Especial could not defend him at the time of the case and he ended up having his parental rights stripped and his daughter adopted.

But the truth has another face.

Martin really tried to have contact with Rebeca. For many years he did not spare any effort, going to Interpol, to the Brazilian Central Authority, to the judiciary and to the Hague Convention.

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III – OF THE POSSIBILITY OF THE BIOLOGICAL FATHER TO PETITION FOR A JUDICIAL REVIEW AND A DECLARATION OF INVALIDITY OF ADOPTION AND OF LOSS OF PARENTAL RIGHTS; OF THE VIOLATION OF COUNTER-ARGUMENTS AND THE INVALIDITY OF THE ABOVE LOSS FOR REASONS OF IGNORANCE OF THE FACTS:

Teaching and jurisprudence do not diverge as to the capacity of the biological father to offer what the adoption removed without his knowledge. Note: in the Statute of Children and Adolescents, Saraiva, Paulo Lúcio Nogueira, comentaries art. 39 à 52, pág. 75, "*pode ocorrer ação de anulação da adoção processada normalmente, sem a intervenção do pai sanguíneo, que poderá funcionar somente como litisconsorte, em defesa do ato para cuja realização se exigiu seu consentimento, que, entretanto, não houve,* ***ou, na mesma hipótese da inexistência de seu consentimento, o próprio pai sanguíneo poderá intentar a ação de anulação". GN*** *(.....) "Poderá ser restaurado o pátrio poder ao pai natural desde que aja anulação da adoção, como também tem reconhecido à jurisprudência".*

Observe that the act of adoption unjustly preempted due process of the loss of parent's rights providng an adoption that was not agreed to by the biological father as a sanction fr the violation of parental duties. This is because full adoption can only occur when there is agreement on who has rights, when the fathers are unknown and moreover when there is removal of parental rights according to the editing of art. 45 and paragraphs of ECA.

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In cases where the adoption was not agreed to by the biological father who is also known not having been previously stripped of his parental rights it is essential that proper procedures for removal of rights be established with proper observance of legality and strict observance of counter arguments. Absolute caution is necessary for the gravity of the measures being taken putting importance on the loss of links of the child with the natural father by the procedures foreseen in the ECA.

This has been defended by DD. Curadora, fl.s 51of that act, but not honoured by the judge who, on forming a judgement, removed parental rights and granted them to the adopter.

By the manner in which the above has been presented, presupposing the combination of the adoption with the removel of parental rights, the judgement did not fulfil the requirements art. 282, IV, do CPC, because it did not require that the father should lose his father's rights. Such a fact by itself carries failings but also reinforces even more the weakness of the failings with respect to the summons, the father having been summonsed in respect of the adoption and not to defend his father's rights. The weaknesses in the case would demand that the former be rejected, art. 295, its outcome was the adoption.

So then, as if such invalidity were not enough, because of disregard for due process, the fact that Martin was not personally summonsed has led to him being deprived of his rights and unable to defend his extremely personal rights of paternity. In this way there has been damage caused to him. Thus the possibility to manage an Ação Declaratória

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de Nulidade. See marginal notes of STJ, Resp. 283.092, SC, Min. Rel. Humberto Gomes de Barros, DJ 21/08/2006:

> *CIVIL LAW. FULL ADOPTION. SUPPOSED REMOVAL OF FATHER'S RIGHTS. NEED FOR APPROPRIATE DUE PROCESS TO THIS END. OBSERVATION OF THE STATUTE ON CHILDREN AND ADOLESCENTS.*
>
> *I – The granting of full adoption does not automatically imply thet the loss of father's rights should occur – this should be decreed through a separate and appropriate autonomous judgement to this end with observation of strict legality and normative restrictive interpretation, we caution that this should not be just on the grounds of the seriousness of the measures being taken since not only does it result in the breaking of ties of the child with her natural familybut it also has strong relevant repurcussions in her socio-affective life with principles of counter argument and due legal process being disrespected (articles 24, 32, 39 a 52, highlighting article 45, and articles 155 a 163 of the Statute of the Child and Adolescent).*
>
> *II – Note that in the case that the adoption is being carried out against the wishes of the biological mother as a type of punishment for the violation of previously established judicial duties – an appropriate*

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circumstance for argumentative judicial procedure that can only be perfected by judicial judgement , a situation which only reinforces the necessity of the launching of an individual lawsuit to the ends sought, with a view to impeding violation of highly personal rights relative to maternity. Special resources provided to judge the legal issues of the lawsuit on the grounds of judicial procedural impossibility in the request with the safeguard that the situation of the child shuld not be altered leaving her in the guardianship of the petitioner.

IV – ON THE PROVING OF THE INVALIDITY OF THE PUBLIC SUMMONS ALLOWED THROUGH THE ACCUSEDS' FRAUDULENT ACTS:

- **On the documents in the orange section.**

The first documet in the orange section, issued by the Brazilian Presidência da República, Special Secretary for Human Rights,which is the work of Dra. Patrícia Lamego Soares, Coordenator of the Federal Central Administrative Authority suggests revision of the adoption on the grounds that Mara acted in bad faith in court. *Viz:*

"I also declare that from an analysis of the documentation that informs the procedure in this Central Authority, everything indicates that Mrs Mara has acted in bad faith in affirming, in court, in the scope of a lawsuit that resulted in the adoption of the child, that she did not know Mr Boyle's address and that she did not have

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means of contacting him. Furthermore, there is proof that Mr Boyle has been trying for years to see his daughter

Having been impeded by Mrs Mara in clear violation as much of his daughter's rights as those of Mr Boyle."

- **On the documents in the blue section:**

The principal incidents of the separation and divorce of Mara and Martin are attached in the blue section. From them can be extracted bruising proof of the bad faith of the accused José in forging an inexistent context for a public summons.

It can be understood that the accuser had left a known address in England written in the body of the initial separation, **Snowdrop Villa, Burtey Fen Lane, Pinchbeck, Spalding Pell, England,** the fact which causes us shock is that since 1996 Mara as well as her lawyers were constantly sought by Martin's English lawyers. But at no time did anyone try to contact them to confirm, solicit or inform them about the adoption not even questioning them about Martin's residential address or his right of attorney in Brazil, preferring to say that he was in an unknown place.

Worse still is that at the time of the cases Martin was under the counsel of a Brazilian lawyer, and that both the accused and their counsel posessed means of contacting him. It must be emphasised that at the same time as this the accused – principally Mara – were being contacted by the British Consulate at the request of Martin.

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The final proof is stamped on the petition of 19 September 2005 **(em pelo curso da citação editalícia para contestação),** the work of the counsel of the accuser, Dr. Roger Loureiro dos Santos written in the act of divorce. In it the counsel emphasises the Calvary Martin had passed through in trying to visit Rebeca, making clear that although Martin had come to Brazil, having stayed from 10th to 28th July 2005, it was not possible for him to see her because of the obstacles put in the way by Mara and her family. He emphasised that, notwithstanding Martin's efforts, Mara did not respond to his attempts at contact, making it impossible for him to send Rebeca's child support.

Let's now look at the obstacles thrown up by the in-laws. Although Martin had gone to their residence in Itu, they hid Mara's address.

It was in this context that Martin called for the intervention of the court of the Capital so that Mara could be summonsed to give her address and permit visits, the case having been endorsed by the Public Ministry and deferred by the court. He issued a writ in Itu to summons Dra. MARIA JOSEFINA OLIVEIRA REZENDE, because she as well as being the counsel in the cases was also Mara's mother.

Police Report on the obstacles put up by the in-laws dos obstáculos dos Sogros issued in DEATUR on 27th July 2005.

For her part, Dra Maria was personally summonsed to deliver Mara's address by the central court on 10th May 2006. However, instead of delivering it the dignified doctor preferred to divert people form the adoption, having said by writ on

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28th June 2006 that her daughter lived in Itu in the Alameda Imperatriz, 15. It happens that it has been fully proven that Mara lived in São José dos Campos at this time (there is information form February 2004, given by the same Dra. Maria to social workers who had been sent to Mara's residence in Itu, Alameda Imperatriz, 15, vide fl.s 28, docs. of the Guardianship –blue document section, that the family worked and lived in São José dos Campos; having created the sending of the case to São José dos Campos by a decision of fl.s 31, 17th February 2004).

Four things are strange about Dra. Maria, Mara e de José's counsel's conduct, whose knowledge of the latter is more than presumed – it is well-known.

Firstly, note that she lacked honesty and acted with procedural disloyalty in throwing people off track and hindering Martin's knowledge of the act of adoption.

Secondly, the bad faith on the part of the accused in the forging of the context of the public summons, having been simultaneous to the public summons when there was still time for counter arguments with officials sent to find Martin is patent. The accused acted with procedural disloyalty, Dra Maria, counsel for José, having hidden from the court in São José dos Campos that they were not dealing with an accused in an unknown place but an accused in a known location and with rights of attorney that were known and contracted to arrange visiting rights in respect of the child that she said had been abandoned by the father.

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Third, we know that Martin was not sought through his counsel and that there was no attempt to summons him or contact them.

Finally, in fourth place we have the fact that the public summonses are evidently invalid because taken out of a truthful context "*contra – legen*" through fraudulent acts of the accused and the counsel.

The degree of deception and duplicity was of a size that the poor father continued hopeful of seeing Rebeca through the intervention of judicial means even after having the judgement of adoption enacted against him that he did not know about on 7th June 2006. See the writs where he calls for the intervention of the courts for visiting rights on 11th August 2006 and 6 December 2006.

The fraud in cancelling Martin's right of defence in the courts by Mara was of such a size that the counsel of the accused preferred to O dolo em anular o direito de defesa de Martin no juízo por Mara foi tamanho que a demandada que sua patrona preferiu renunciar resign from the divorce on 24th October 2006, in order not to be representing the accused, without having enlightened the central court about the relevant questions. But the fact is that the counselling continued strong during the adoption.

Note, excellencia, that the theme of invalidity cries out for redoubled attention from the court about the reprehensible behaviour of the accused. Notwithstanding the judicial context being by itself more than able to confirm the invalidity of the decision on the

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grounds of lack of due legal process, there is also the nature of rights at play here. This means that the weakness of the case represents the loss of father's rights with adoption.

The proof is as clear and bruising as the invalidity of the public summons and the respective decisions in the judgements. The documents chronologically attached in the orange section make real the fraud on the part of the accused as much over the public summons as the nasty abandonment of Rebeca. *Viz:*

- **On the documents in the orange section:**

In 1996 the accused Mara and her counsels were contacted by the accuser and his English lawyers with a view to divorce with writs signed by the respective counsels in 1997, but Mara's and Jose's counsels never attempted to contact Martin through his counsels with a view to summonsing him for the processes of guardianship and of adoption.

As far as the statement sworn in front of the English court is concerned, note that Martin had his health affecetd by Mara's behaviour, having stressed that he knew little of his daughter's whereabouts and well-being. For its part, the English court agreed that the divorce should be given because of the behaviour of the person appealed against. Note that contrary to what happened here, Mara had the opportunity of defence in the English court, having been summonsed to this end.

Direct interventions were attempted by the British Consulate General in São Paulo to try and get Mara to agree to visiting rights for Martin. However, the pro-consul, Ana

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Armond, in an e-mail of 8th May 2006 declared that Mara would not permit the consulate to visit Rebeca, creating obstacles and making impossible the visit that the consulate intended to make **(note that the accused could have alerted the consulate to the adoption).**

In this same e-mail note that Martin's despair in ever seeing Rebeca is patent, whose hopes ran out when he saw that the consulate was equally impeded from helping him, having narrated all the difficulties put in the way by Mara and her counsel, Dra. Maria Josefina, doubting at the same time that his daughter was even alive.

The accuser also contacted the Foreign Office Child Abduction Section about Rebeca's case, having been contacted on 12th May 2006 by David Paignton who instructed him about the case having explained that the consulate could not visit a child without the authorisation of the mother (Mara).

Mara and José knew about the British Consulate's worries but were commited to the adoption. However, they did not solicit the help of the consulate to localise Martin in order to summons him, preferring to hide information about the guardianship and adoption cases about which the international organisations remained ignorant, keeping Martin in ignorance.

The poor father also sought the help of the Child Abduction Section of the Foreign Office according to information which were sent to him on 14th June 2006 by Wendy Newsum, secretary of the Latin American desk.

Determined to see Rebeca again, he also went to the Office of the Official Solicitor on 9 August 2006. He made a statement against Mara to this organisation for

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impeding his access to his daughter and provided the details and addresses of the in-laws in Itu, narrating the whole context.

He told them that they had separated in 1992 and that he had returned to England **and that he sent child support, but as Mara did not confirm the receipt he began to deposit the money in a savings account for his daughter and that in 1994 he had returned to Brazil and been prevented from seeing his daughter and that since then had only received photographs, that Mara had broken off all contact but that until 1999 and 2000 he managed some contact with his daughter by telephone, but that this finished when he announced that he had married again and Mara became hysterical causing Rebeca to become hysterical too; that since then he has tried to contact his daughter through his in-laws but that all attempts were fruitless, he having been blocked time and time again; that in 2005 he came to Brazil determined to see Rebeca but was impeded by his in-laws; that he made a statement against Mara and attempted consular help, having contracted a lawyer, that the in-laws deceived everyone; that because of the intervention of the courts the the in-laws gave him the address in Itu to slow down his attempts to see his daughter, lying and preventing him from seeing her; his ex in-laws said that Rebeca had no interest in seeing him, that she had nightmares andthat she was in therapy because of him and that he would only see Rebeca if he paid £75,000. He ended by saying that he did not know where his daughter was, nor did he have proof that she was alive. He sought the intervention of a social worker to intermediate in a visit with his daughter.**

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The case is so grave that it ended up at the doors of the Brazilian Presidência da República do Brasil, Special Secretary for Human Rights and was assigned to Patrícia Lamego, Coordenator of the Federal Central Administrative Authority on 25th August 2006, she having related to the English authorities the steps taken, having notified Mara of proceedings under the Hague Convention, inquiring whether she would be willing to come to an amicable arrangement with Martin, also relating that they had sent the case to Interpol to find out the whereabouts of the child.

The case even reverberated in the office of the Parliamentary Ombudsman in London on 8th December 2006, with Martin, after a brief narrative, asking that they contact his ex-wife and solve the impasse with the consulate and the Foreign Office.

On 22nd December 2007 the accuser, ignorant of the loss of his parental rights, sent a proposal on visiting rights to the lawyer representing Mara at the time, Dra. Araci F. A. Lopes de Oliveira, of São José dos Campos.

The Brazilian central authority contacted its English counterparts on 30th June 2008 informing them of the adoption of Rebeca and the loss of father's rights and withdrew Martin's right to submit his pleas under the Hague Convention, saying he should try to annul the adoption.

By official letter on 3rd February 2009, the Foreign Ministry confirmed that the the British Consulate was contacted by the accuser on 27th March 2006 (which confirms the veracity of the email that we have cited where the pro-consul says what

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she has done to try and get contact with Rebeca, the possibility of a verification of well-being, having also been contacted by the lawyer of the maternal family)

All of this means, by the ample material attached, that the accused Mara, Jose and their respective counsel Dra. Maria had effective and viable means of delivering a valid summons on Martin through the vast array of contact with the accuser.

In the documents in the red section, note how Mara only referred to the adoption after she had been called on during an administrative process having responded to the authority by letter on 20th February 2008.

The intention of Mara and of Jose to hide from the British authorities any knowledge of the adoption is patently evidenced by the intervention of Interpol, see the official letter of 21st January 2008 where the blocking of the father's attempts to see his child since the couple's separation are mentioned.

The bad faith of Mara and of Jose in issuing a public summons caused shock even in the Brazilian Central Authority, see the official letter to Mara of 4th March 2008. *Viz:*

> ***"Taking into account the news that the child has already been adopted – news that has caused great surprise, since we are talking about a process of removal of father's rights in which Mr Martin Boyle took no part, although he could have easily been contacted through his lawyer or even through this central authority we request that you send us a copy of the judgement of***

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adoption so that we can pass it on to the English central authority so that Mr Boyle can take the appropriate steps."

In recounting Martin's difficulties in visitation rights, we expose the way the family of Mara played around with the social workers in Itu when they tried to carry out a request from International Social Services. See the letter of 17th September 2007 which shows that they had to try no less than 8 times to contact Mara through her lawyers and family only then to be told by Mara that she would not permit any contact in her parents' house in Itu, prefering to arrange a meeting in the Town Hall in Itu only not to turn up. She also refused to permit social worker contact with Rebeca and did not even reveal her address saying that any eventual contacts should be made through the mediation of her lawyer Dra. Araci F. A. Lopes de Oliveira Também (note that this was the lawyer that Martin had made a proposal to on 22nd December 2007. The lawyer subsequently denied ever having been Mara's lawyer).

His anguish at the loss of contact with Rebeca and anxiety to exercise his paternal rights and reconcile with her brought him to Brazil on 25th July 2008. However, everything died in the passport control when he was arrested and imprisoned by the Federal Police under an arrest warrant for a child support debt issued by the 5th District Family Court of Itu for R$6,309.42.

And although he paid the debt, he was kept in prison since, because of a bureaucratic error, the warrant had been cancelled since the debt was infinitely superior – more than R$80,000. He obtained his release on a legal challenge after 15 days in prison.

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Flagrant proof that Martin did not know of the removal of paternal rights is shown in the writs issued in which he asks for a bank account for the deposit of child support and requested the address of Rebeca for visits. The information about her adoption only came through repeated efforts in the 17th Civil Registry of the Capital, since he had been denied a copy of his daughter's new birth certificate on the say so of the court of São José dos Campos.

The proof that Martin has been trying for years to contact Mara and Rebeca is endorsed in the documets in the blue section with reports about the unfortunate imprisonment in Brazil. One report says he has been repeatedly frustrated over the years in his attempts to have contact with Rebeca.

The "Mail On Line": *"He flew to the south American country on Friday determined to be reunited with his daughter, Rebeca, who is 16..."* In this report, according to his father: "He has been trying to get access to Rebeca for years but has always been refused by his ex-wife."

V – OF THE PROCESS OF ANULMENT. OF THE INVALIDITY OF THE PUBLIC SUMMONS:

The domicile of the accuser in the UK was known to the accused from 1992 having been written down in the text of the writ of consensual separation: **Sowdrop Villa, Burtey Fen Lane, Pinchbeck, Spalding Pell, England** (see the blue document).

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It is certain that the adopter, as partner of the accused Mara, effectively knew Martin's address in England as since 1996 Mara and her lawyers were constantly contacted by Martin's English lawyers, their having even put together for the accused divorce papers where the same address is mentioned.

The counsel of **José (ex. mother-in-law of Martin, grandmother of Rebeca, mother of Mara and mother-in-law of Jose) was summonsed by Martin on 10th July 2005 (see the Police Report issued on 27/7/2005 in DEATUR – yellow section) since she had refused to hand over Mara's contact details to Martin.**

On 19th September 2005, there is a writ from Martin where his counsel requests the help of the court in granting visitation rights, Mara's counsel having been personally summonsed to deliver her address. The proof that the adopter and the counsel effectively knew for certain Martin's address is robust and consistent.

Martin was in a certain and known location and the documentation shown is vast and exhaustive with regard to this. In the time of the summons, Jose, Mara and her counsel were effectively contacted by national and international organs and agencies. If they had wanted they could easily have issued proceedings against Martin.

The procedures of the accused were illegal and in bad faith and they prejudiced and caused harm to the accuser who ended up defenceless since the suradoria especial did not have the means to defend his interests not having access to the facts and the documents.

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The hiding of the accusor's address in the UK impeded the issuing of a rogatory letter for his legal summonsing.

National jurisprudence is firm on this and has support in the summary 391 of the supreme court, when one of the people to be summonsed is in a known location there should be no public summons.

Mention should be made of art. 247, of the CPC, to the effect that **"summonses and court orders will be void when they are done without observance of due process".**

The procedural onus is on the author to proceed with the summonsing of the accused. For his part, it is demanded that this act be fit even if only to protect him from an eventual accusation of invalidity on the grounds of procedural flaws.

> *"Concerning the loss or the suspension of father's rights over inalienable rights, the Statute paid special attention to summons, prescribing that all means must be exhausted to trace the person sought. In other words, giving him the chance of real defence and knowledge of what he is being accused of. Only in cases where personal summons becomes extremely difficult or impossible will it pass to further modes of communication of the act of summons – this means if the person sought goes into hiding at the time of the delivery of the summonsand if his whereabouts are unknown then public summonsing*

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can be resorted to. According to the rules though it should be done through official letter: art. 225 of the CPC" ("O Estatuto da Criança e do Adolescente Comentado", Munir Cury and others- São Paulo, 1992, Malheiros Editores, p. 467). Notas written in the document of TJ/SC, rel. Des. Amaral Silva, Ação Rescisória 812, J. 16.08.94.

When dealing with adoption which results in the removal of parental rights the judge should not declare the accused in breach of the order without first determining the steps in the first paragraph of art. 158 of the Statute of Children and of Adolescents: "All means of personal summons should be exhausted."

The question put here needs to be confronted, where a father has lost his parental rights in respect of his daughter through the pure result of a reprehensible act of the mother of the child, of the grandmother and adopter and of the respective counsel losing at once his **fundamental rights and fundamental guarantees** is the most important act to be brought in this process. Through this the sacred right of counter argument and of ample defence is laid out. Through this, the proper triangular relationship of author, accused and judge is found – something which a curadora especial cannot fulfill. This shows up a weakness in this case:

"Charging of fees, Charging. Summonsing of a person resident abroad. Summonsing through Rogatory Letter. Under: art. 210 do CPC. Recourse to which precludes proof.

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(...) When the person sought intends to change the decision that determined the summonsing of the aggreiving side by Rogatory Letter by: "that the means of localisation of the person sought in national territory, as much in the unit charged as all the addresses provided by various public authorities". The public summons should then prevail through a special curator so that the judgement can take place

The procedural onus is on the peritioner to summons the accused.

There are notes in the acts that the side resided in London, England according to an official response from TAM Airlines.

There is no way of not considering this situation to the degree that it is presented: there is an address for the other side in the the acts nd it is for the petitioner to summons him at the address tha thas been given

Despite these considerations, observed by the agravante you cannot confront the question posed in the acts without analysing with attention the final ends of the summons, which is in terms of guarantees and fundamental rights the most important act to be carried out in the course of the lawsuit. It is the fundamental mark for the guarantee of the right to full defence of the sought person and is equally in the interests of the petitioner who needs full due legal process in the lawsuit. – TJSP, rel. Des. Francisco Occhiuto Júnior, Agravo 1.125. 008 – 0 / 3, 32ª Cam. Dir. Priv. 31/01/2008.

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Ementa: *"REVISIONAL - Busca deficiente da filha, então menor, dita residente no exterior - Citação editalícia precipitada - Anulação do processado - Mantença, contudo, da pensão fixada na sentença, face o nascimento de outro dependente do autor, e de suas dificuldades económicas, a título de provimento judicial antecipada - Renovação determinada - Recurso provido, com observações".*

Acordão: *"Dou provimento ao recurso, para anular o processado por falha na base citatória. A citação constitui-se no ato mais importante do processo, porque dá vida ao direito de defesa e ao contraditório. Sem a mesma, inadmissível o julgamento. (...).*

Não cabia a citação editalícia, sem que uma série de diligências fossem feitas e, se efetuada, cientificados, "ad cauteíam", avós maternos (que, com certeza, saberiam do endereço da filha) e encaminhar-se-iam cópia da petição inicial e do último advogado da ré, além de encaminhamento, por A.R., com comunicação do último endereço fornecido.

Necessário um mínimo de diligência, de modo que anulável a citação editalícia. (...). TJSP. Apelação. 276.890-4/4; Marília; j. 18/ 11/ 2003; Rel. Alfredo Migliore.

The inadequacies in the summons were suggested from the initiation of the case, the adopter having sued for guardianship without indicating and naming the father in the passive pole. The father only ended up being acknowledged no less than one year later through the efforts of the prosecutor in fl.s 67, de 16/12/2004 (number of the act of

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guardianship),this having been determined by amendment. However, in emending the case, the adopter's counsel declared Martin as being in an unknown situation and location -– fls. 69. (guardianship).

The pretense of the adopter and his respective counsel is obvious. Dra. Maria represented and counselled Mara in the cases of separation and divorce. Because of this, it is evident that she, in representing the accused, deliberately hid Martin's situation and his respective domicile aiming to make difficult for him to engage in the case and defend his father's rights. This happened in 2005, in January, a time at which the accused were being literally pursued by the governmental agencies.

And this did not happen accidentally. There was a E isto não ocorreu despropositadamente. There was a fundamental interest on the part of the adopter José, the counsel and his spouse Mara in hiding and impeding the truth. patrona e sua esposa Mara em ocultar e impedir à verdade. The truth was no other than to maim the biological father's defence of his father's rights.

From this sham followed the public summons and sterile measures to locate Martin. This was because Jose used his standing as a foreigner resident in England fls. 04 / 05, in such a way as to cause the enquiries of the Brazilian Inland Revenue to come to nothing. They did not reach him simply because the address found corresponded to the old extinct matrimonial residence, Rua Apinajes, 902, 91, Perdizes (see fls. 77 da Guarda in confrontation with the situation of Mara nin the Separation).

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The initiator of Guardianship (Jose) narrates clearly that the person sought had returned to live in England after the separation. However, he never made any request to the British Consulate for confirmation of his address.

In the writ in fls. 93/94 of the Guardianship, José through his counsel insists that Martin cannot be located. The petition is from 2005, a time when his counsel was being contacted by Martin and his lawyer.

At most, the act of Guardianship was suspended in favour of the process of adoption, a special curator having been appointed only for the adoption. In the adoption the person sought (Martin) also ended up being summonsed publically without having been summonsed for the taking away of his father's rights.

The fact that all the required means of locating Martin were not exhausted is crucial when it was known that he was a foreigner and that he lived in England.

A simple official letter could have been expedited to the Ministry f Foreign Affairs inquiring into the possibility of carrying out the summons of the person sought through the Brazilian Embassy in England; more simple still: **The British Consulate in São Paulo, where Martin was more than well-known because of his tireless struggle to see Rebeca, could have been contacted.**

The art.s 213 e 214, of the CPC, respectively, asserted that the *"summonsing is the act by which the accused or suspect is called to court with the aim of his defending*

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himself"; being that for the lawsuit to be valid "*the direct summonsing of the accused is indespensible*".

Teaching notes referred to summonsing as a presupposition of due process, "once carried out, the system demands that the summons be done validly.Similarly, a valid summons is a presupposition of the validity of due procedure. In sum: the carrying out of the summons is a presupposition of regularity in due procedure." Notes, art. 214, CPC Comentado, Nelson Nery Jr., 2ª Ed., p. 629.

Public summonsing is irregular because it ignores the legal scope of art. 231, such that it results in ignorance and uncertainty as to the whereabouts of the accused. Summonsing, made concrete prematurely in a public way is invalid. The corresponding procedure is also invalid, "ex lege", because the appropriate triangular procedure does not exist.

National jurisprudence summarises it in this way:

> *"Personal localisation of the defendant by all means must be attempted. Only after a fruitlessoutcome will there be the opportunity for public summons."* (obra idem, pág. 649, comentários art. 231).

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If the accused had not acted in bad faith. If the court had exhausted the valid means of localisation of Martin abroad, certainly the summons could have been effectuated though a rogatory letter under the terms of art.s 200 usque 210, of the CPC.

Without the minimum attempt to verify an address abroad, the STJ already invalidated itself, REsp 200, 28/11/89, 4 ª Turma, rel. Min. Bueno de Souza, in RSTJ 8/231), in the margins of which is written:

> *"Invalidity of the summons and judgement reached in a discriminatory lawsuit. Summons effected directly. Summons effected directly in a public way in the absence of any diligence which shows the impossibility of it's fulfilment through rogatory letter."*

In the same way: RT 511/146 e JTACivSP 51/87:

> "Lack of agreement does not prevent the issuing of a rogatory letter and its fulfilment, that can only be tested by the refusal of the destination country to fulfil it".

Regardless of the fact that there is an agreement between Brazil and the UK, there is a regulated procedure for when an agreement between countries does not exist, Document 26 of 14th August 1990, of the Foreign Ministry: When no agreement between countries exists the letter should be sent by diplomatic means. It should be done in

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the following way: the court or tribunal making the request sends the letter to the Ministry of Justice and it, for its part, sends it to the Foreign Minisry , which sends it by diplomatic means to the foreign court being petitioned.

The fact was that the complexity of the Letter would be incompatible with the swiftness of the matter being brought before the rays of justice because the right of counter argument and full defence, principally in a case whose distasteful aim was as completely drastic and harmful as the removal of parental rights, of ART. 5º, LV, could not under any circumstances end up being mitigated.

As well as constituting Fundamental Rights under Magna Carta as reverberating as it is, by chance, in negative reflexes to law that the natural and loving protection that the father hoped to provide for his offspring whose presumption is natural insurgency against his loss.

> *Ementa: "CONDOMÍNIO. AÇÃO DE COBRANÇA. DETERMINADA DILIGÊNCIA PARA A LOCALIZAÇÃO DOS RÉUS ANTES DE SER REALIZADA A CITAÇÃO POR EDITAL.*
> *A decisão recorrida foi proferida de acordo com a previsão legal do art. 231, inc. II, §1º do CPC, pois, primeiro, devem ser esgotadas todas as formas de localização dos réus antes de ser realizada a citação por edital. Sendo necessária a expedição da carta rogatória ao exterior, incide a Convenção Interamericana sobre Cartas Rogatórias* ***(Decreto nº 1.898,***

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> *09/05/96). Caso a viagem dos ora agravados for de natureza turística, de cunho transitório, não há óbice a que se aguarde o seu retorno ao país a fim de dar o devido andamento ao feito".*
> TJ/RS, Decisão Monocrática, Agravo, 19º Câmara, Porto Alegre, 70027096056, Des. Mylene Maria Michel, J. 24/10/2008.

The line coming today drom the Supreme Federal Tribunal with the aim of ratifying overseas judgements is quite rightly the legality of a summons carried out in the alien court against a defendent in Brazil, and rejects public summonses only made abroad which are prejudicial to a Rogatory Letter to Brazil, having suggested the publication of the public summons in Brazil too

For the ratification of an overseas judgment in Brazil, similar zeal must be established with respect to the foreigner resident in Brazil, not on the grounds of any privilege, but on the simple grounds of legality and legitimacy, in view of the rights involved. We cite the following interesting accord: *Viz*:

> Ementa: "*Homologação de sentença estrangeira contestada. Autenticação da sentença e do transito em julgado pelo Consulado do Brasil no exterior. Citação de estrangeiro do edital nula.*
> *1 (omissis). 2 Havendo prova suficiente de que o exeqüente, no exterior, tinha ciência que os devedores residiam no Brasil, a citação por edital realizada no pais estrangeiro não surte qualquer efeito. É essencial que a citação, nesse caso, seja efetuada mediante carta rogatória para ser*

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cumprida no território brasileiro, sob pena de violação do direito de ampla defesa. 3 (omissis).

Acórdão: *(...) Não há dúvida, assim, que a exeqüente sabia que os executados residiam no Brasil. Além disso, possuindo o numero do fax dos executados, seria possível, mediante algumas diligencias, localizar o endereço residencial ou comercial deles em nosso país.*

A citação por edital no cenário dos autos, ao argumento de que os executados se encontravam em local incerto e não sabido não tem qualquer sustentação, sendo certo que deveria a exeqüente ter providenciado o envio de carta rogatória para a justiça Brasileira no sentgido de localizar e citar os devedores, nesse sentido, precedente da Corte Especial.

(...)

Ora, esta corte tem firmado orientação de ser imprescindível, em casos deste gênero, a expedição de carta rogatória, e publicação de edital no Brasil, principalmente porque os telefonemas firmam a convicção de que a requerente tinha condições de informar a justiça, senão do endereço preciso do requerido, pelo menos de seu provável paradeiro.

(...)

"Homologação de sentença estrangeira negada, porque não comprovada a publicação de edital de citação no Brasil, onde residia o Marido, réu na ação de divorcio, e por haver sentença brasileira de desquite com

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fundamento conflitante com a proferida em Portugal (SE 1.770 PORT, Victor Nunes Leal, DJ 03.10.63) . p . . Irregularidade de citação por edital, com dispensa de rogatória de pessoa residente no Brasil. Homologação Denegada. Agravo Regimental não provido.

(...)

STF, j. 19 de junho de 2006, Min. Carlos Alberto Menezes Direito, Sentença Estrangeira Contestada nº 473, EX 2005/0181484 – 1.

Despite anything else that might be said in the previous line of argument, we aredealing here with ABSOLUTE INVALIDITY, something which calls for recognition and declaration at all times and even up to the ssuing of an official letter. It is required that INVALIDITY OF PUBLIC SUMMONS AND AS A CONSEQUENCE THE CANCELATION OF THE ACT OF GUARDIANSHIP; OF THE ADOPTION JUDGEMENT; THE INVALIDITY OF THE THE ADOPTION AND THE CANCELLATION OF THE OF THE ADOPTION AND FATHER'S RIGHTS.

The invalidity of the summons being recognised, by the invalidity of the subsequent actions and the length of time for the petitioner to to contest the Guardianship Process, loss of father's rights and adoption:

"O juiz pode, de ofício, reconhecer a falta ou nulidade da citação: O exame de anomalia na citação independe de provocação da parte, uma vez que ao judiciário incumbe *apreciar de ofício os pressupostos e as condições da ação (CPC, art.s 267, § 3º, e 301, § 4º)" (STJ – 4ª T, Resp 22.487 – 5 – MG, rel. Min. Sávio de Figueiredo, j. 2.6.92,deram provimento, vu.,*

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DJU 29.06.92, p. 10.329). No mesmo sentido: RT 723/335. Notas, CPC, Teotônio Negrão, pág. 319, art. 214:2ª.

VI –OF THE REQUESTS.

From what has been shown, the petitioner **REQUIRES** proof of the lawsuit on the grounds of the requests shown in the body, to (1st) **DECLARE INVALID THE JUDGEMENTS OF GUARDIANSHIP AND REMOVAL OF FATHER'S RIGHTS AND OF ADOPTION; NVALIDITY AND CANCELLATION OF THE GUARDIANSHIP, CANCELLATION OF THE ADOPTION ON THE GROUNDS OF PROCEDURAL WEAKNESSES.** (2nd) Recognition of the invalidity of all actions prior to the public summons, being that they should have summonsed the person sought (Martin) allowing him time for counter arguments Reconhecimento da nulidade dos atos posteriores à citação por edital, devendo – se citar o demandante, abrindo – se prazo de contestação. **Following on from this, he requires the annulment of the adoption and his loss of father's rights on the grounds of absence of knowledge on the part of the biological father.**

The SUMMONSING of the accused (Mara and Jose and Dra Maria) at their relevant addresses since Rebeca will ave to be represented by her 'parents' Jose and Mara, so that they can see the current lawsuit and present any defence that they have and want under pain of being declared in contempt of court. COMPLETE PROCEEDING OF THE CURRENT CASE, WITH THE COLLECTION OF ALL REQUESTS ARTICULATED IN ITS

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BODY, with all costs, fees and payments being borne by the accused (Mara and Jose and Dra Maria).

The addition of new documents, and the requirement to prove the alegation by all means and admissible proofs, witness statements, documents, admission, confession, personal evidence and statements an the part of the reverse under pain of confession.

Ad cautelam, the unarchiving of the Guardiaship and Adoption judgements is required for reference.

The subjection of the accused (Mara and Jose) to prosecution for bad faith is also required.

The value for fiscal ends is fixed at R$ 1,000.00

São Paulo, 15 September 2009

We request and expect this to be acted on.

Alexandre Calissi Cerqueira

OAB / SP 154.407