



**In re NDB & HS (Minors) (Miscellaneous Application
E022 of 2024) [2024] KEHC 9048 (KLR) (29 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9048 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MISCELLANEOUS APPLICATION E022 OF 2024
PN GICHOHI, J
JULY 29, 2024
IN THE MATTER OF ARTICLE 14 (1) AND (2) OF THE CONSTITUTION
AND
IN THE MATTER OF THE KENYA CITIZENSHIP AND MIGRATION ACT NO. 12 OF 2011
IN THE MATTER OF NOEL DOMINICK BUDALICA AND HOPE SARON (MINORS)
DAMARIS RIGIRI
IN THE MATTER OF
DRB APPLICANT**

RULING

1. Under a Certificate of urgency, an Originating Summons dated 10/06/2024 was filed by the firm of S. K. Mburu & Co. Advocates for the Applicant seeking orders:-
 1. Spent
 2. Spent
 3. That NDB and HS be declared Kenya Citizens by virtue of having been found abandoned within the Republic of Kenya at a tender age.
2. The grounds thereof and emphasised by the Supporting Affidavit sworn on 10/06/2024 by the DRB (Applicant) are that when the first subject being NDB, was found abandoned within Nakuru Town on 25/06/2019, the matter was reported at Nakuru Central Police Station and subsequently brought to court under P & C Case No 292 of 2019. The subject was later committed at the Mission in Action Children's Home for a period of three (3) years .



3. The second subject HS was also found abandoned in Kapkures Centre on 24/05/2023 and brought to court vide P & C Case No 283 of 2023. She was also later committed at the Mission in Action Children's Home.
4. The Applicant, depones that she is the Director of the Orphanage called Mission In Action located in Ngata Area within Nakuru and which is in partnership with Mission In Action in Australia. That due to the good relationship they have, the Australian office has been sponsoring travelling of minors to visit Australia.
5. She further states that the selected minors are always being issued with passport and Visa to enable them travel abroad. That the two subjects are among the those selected to travel there in July 2024 and she has made arrangements to travel with them and prepared their Birth Certificates. However, without a Court Order declaring that the two are Kenyan Citizens, they cannot be issued with the Passport and Visa.

Determination

6. The Court has considered the Summons and annexures supporting the averments herein. Article 14 (1) and (2) and (3) of the Constitution of Kenya 2010 provide that:-
 - (1) A person is a citizen by birth if on the day of the person's birth, whether or not the person is born in Kenya, either the mother or father of the person is a citizen.
 - (2) Clause (1) applies equally to a person born before the effective date, whether or not the person was born in Kenya, if either the mother or father of the person is or was a citizen.
7. The material before this Court shows that indeed the Mission In Action Nakuru Baby Orphanage is duly registered in Kenya and holds a Certificate of Registration to that effect. The averments by the Applicant that the orphanage was being run by herself and her husband now deceased are supported.
8. It is demonstrated that indeed the two subjects were found abandoned at different dates and were subjected to court process as children in need of care and attention vide P & C files No 292 of 2019 and 283 of 2023 for 1st and 2nd subject respectively. Having been satisfied with the Probation Officer's reports, the trial court committed the two subjects to this orphanage.
9. Under safe guards for the rights and best interests of the child, Section 7 of the Childrens Act No 29 of 2022, provides that:-
 1. Every child shall have a right to a name and nationality and, as far as possible, the right to know and be cared for by their parents.
 - (2) Every child has the right to be registered in the Register of Births immediately after birth in accordance with the Births and Deaths Registration Act.
9. The Birth certificates for the two subjects were duly issued showing that they were born in Nakuru , Rift Valley. They certificates do not bear the subjects parents (father or mother).
10. The Applicant's averment that the first subject was found abandoned on 25/06/2019 seems to be erroneous. The annexure DRB3 shows reveals that the 25/06/2019 as the date when the letter was written by one Sonia Juma a Sub- County Childrens Officer Nakuru West Sub-County. That letter bears the OB No 06/14/06/2019 and it is written to the Medical Superintendent PGH Nakuru asking for release of the subject to Mission Childre's Home which she said has the capacity to care and protect the subject.



11. This Court called for and obtained the report dated 10/07/2024 by Childrens Officer Mercy Nyaboke, of the Director of Children Services in the Ministry of Gender, Children and Social Development. That detailed report involved her interviewing the Applicant , her marital and economic status, and the officer’s general observations of the two subjects.
12. Regarding the first subject, she stated that during the interview, the Applicant stated that the subject was rescued on 16th June 2019 after he was found abandoned. That the matter had been reported vide OB No 06/14/6/2019. Indeed, his Birth Certificate shows that the subject was born on 12/06/2019. This Court is therefore satisfied reference to 25/06/2019 as the date was found abandoned as an error on record which is hereby excused by the Court.
13. The report further shows that the two subjects have lived in the Ophanage since their committal as new- born babies. It is clear that the report dated 10/07/2024 herein is favourable to the Applicant in terms of the facts and law.
14. In the circumstances herein , the Originating Summons dated 10/06/2024 in the following terms:-
 1. NDB and HS be and are hereby declared as Kenya Citizens by virtue of birth in Kenya.
 2. There are no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 29TH DAY OF JULY, 2024.

PATRICIA GICHOHI

JUDGE

In the presence of:

Mr. Tanga for the Applicant

Ruto, Court Assistant

