



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT ELDORET**

**ADOPTION CAUSE NO. 1 OF 2005**

**IN THE MATTER OF BABY BR ALIAS E (NOW KNOWN AS BCP)**

**AND**

**IN THE MATTER OF ARTICLE 14(4) OF THE CONSTITUTION**

**AND**

**IN THE MATTER OF AN APPLICATION FOR PRESUMPTION OF CITIZENSHIP**

**BY LAP IN RESPECT OF BABY BR ALIAS E (NOW KNOWN AS BCP)**

**RULING**

[1] The Chamber Summons dated **22 August 2019** was filed by **LAP** under **Article 14(4)** of the **Constitution** and **Section 4(2) and (3)** and **Section 5** of the **Children Act, No. 8 of 2001**, for orders that **Baby BR** (now known as **BCP**), the child the subject of this adoption cause, be presumed to be a Kenyan citizen by birth; and that the Director of Immigration be authorized to issue the child with a Kenyan passport. It was also prayed that the Court be pleased to make any further orders it deems necessary in the circumstances.

[2] The application was premised on the affidavit of the applicant annexed thereto in which she deposed that the child was born and abandoned soon after birth in Eldoret Town; and that an Order for her adoption was made and issued herein on **13 April 2006**. Thereafter, the child was issued with a Kenyan Passport No. [...] which the Immigration Department has declined to replace with the new generation type passport; insisting that it required an order of the Court declaring the child a Kenyan citizen by birth. Attached to the Supporting Affidavit are copies of the Adoption Order and Adoption Certificate, as well as a copy of the child's current passport.

[3] **Article 14(4)** of the **Constitution**, upon which the instant application is predicated, provides that:

**“A child found in Kenya who is, or appears to be, less than eight years of age, and whose nationality and parents are not known, is presumed to be a citizen by birth.”**

[4] On the other hand, **Section 4** of the **Children Act**, provides that:

(1) **Every child shall have an inherent right to life and it shall be the responsibility of the Government and the family to ensure the survival and development of the child.**

(2) **In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies, the best interests of the child shall be a primary consideration.**

(3) **All judicial and administrative institutions, and all persons acting in the name of these institutions, where they are exercising any powers conferred by this Act shall treat the interests of the child as the first and paramount consideration to the extent that this is consistent with adopting a course of action calculated to—**

(a) **safeguard and promote the rights and welfare of the child;**

(b) **conserve and promote the welfare of the child;**

(c) Secure for the child such guidance and correction as is necessary for the welfare of the child and in the public interest.

(4) In any matters of procedure affecting a child, the child shall be accorded an opportunity to express his opinion, and that opinion shall be taken into account as may be appropriate taking into account the child's age and degree of maturity.

[5] It is indubitable that the child, the subject of these proceedings was adopted by the applicant pursuant to a Court Order issued herein on **13 April 2006**. She was thereafter issued with a **Kenyan Passport No. [.....]** on **30 June 2011** which has an expiry date of **28 June 2021**. When she was issued with the said passport, she was 7 years old; and therefore entitled to the presumption of citizenship for purposes of **Article 14(4)** of the **Constitution**. There is therefore no question that the child is entitled to the rights set out in **Section 22** of the **Kenya Citizenship and Immigration Act, No. 12 of 2011**; and in particular, to the documents set out in **Section 22(g)** of the Act, including the new generation passport.

[6] Thus, there is abundant proof not only that the applicant is entitled to the orders sought; but also that it is in the best interest of the subject child for the orders prayed for to be granted. In the premises, the application dated **22 August 2019** is hereby allowed and orders granted as hereunder:

[a] A declaration that **Baby BR** (now known as **BCP**), the child the subject of this adoption cause, is a Kenyan citizen by birth;

[b] That the Director of Immigration be and is hereby authorized to issue the child with a new generation Kenyan passport.

It is so ordered.

**DATED SIGNED AND DELIVERED VIA EMAIL AT ELDORET THIS 12<sup>TH</sup> DAY OF AUGUST 2020**

**OLGA SEWE**

**JUDGE**