

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MILIMANI

ADOPTION CAUSE NO. 43 OF 2015 (OS)

AND

IN THE MATTER OF THE CHILDREN'S ACT

(NO. 8 OF 2001)

AND

IN THE MATTER OF BABY E M ALIAS E M A

RULING

1. I am tasked with determining an application dated 27th January 2016. The applicant seeks orders against the Director of Immigration. They want the Director to be summoned by the court to show why he cannot or is not willing to issue a passport to the minor the subject of these proceedings. She would also want the Director ordered to release certain documents that were presented to him by the applicant.
2. The grounds upon which the application is premised are set out on the face of the application, as well as in the affidavit, sworn on 27th January 2016 by the applicant, in support of the application.
3. The factual background is that the applicant applied for a passport for the child in question twice, in 2014 and in 2015. The first application was not processed as the relevant file was said to have been lost. The second application was processed, but the applicant was required to produce a birth certificate. The applicant caused one to be processed at 'sheria house,' however even after presenting the same the passport was not issued to the child.
4. The application was first presented in court on 29th January 2016, when it was certified urgent by Achode J. It was urged before me on 19th January 2016.
5. The law upon which it is premised is Sections 3A, 63(e) and 80 of the Civil Procedure Act, Cap 21, Laws of Kenya, and Order 51 of the Civil Procedure Rules. The law that governs issuance of passports is the Constitution of Kenya and the Kenya Citizenship and Immigration Act, Cap 172, Laws of Kenya.
6. The child in question is not the biological child of the applicant; rather she is her adopted daughter. The adoption order making the applicant the adoptive mother of the child was made in proceedings that were conducted in this cause.
7. I have carefully perused through the judgement delivered herein on 19th December 2013, which allowed the applicant to adopt the child in question, and which culminated in the adoption order extracted on an unknown date in March 2014. The said judgement did not make any orders relating to issuance of a passport, and none were directed to the Director of Immigration Services.
8. In view of the above, there is no basis for the application dated 27th January 2016 being entertained in this cause. Once the adoption order was made this court became *functus officio*. The court could only thereafter deal with post-judgment applications on matters related to the judgement such as review, execution and stay thereof. The application dated 27th January 2016

has nothing to do with the judgment, it cannot therefore be said to be a post-judgment application.

9. The subject-matter of the application is not governed by the adoption provisions in the Children Act, Cap 141, Laws of Kenya, and therefore it has no place in adoption proceedings. The issue ought to be raised in a suit properly brought under the provisions of the law under which passports are issued.

10. In view of what I have stated above, I am of the view that the application before me is not properly grounded. I am persuaded that the application is for dismissal and I do hereby dismiss the same.

DATED, SIGNED and DELIVERED at NAIROBI this 27TH DAY OF MAY, 2016.

W MUSYOKA

JUDGE