

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MILIMANI

ADOPTION CAUSE NO. 242 OF 2011 (OS)

AND

IN THE MATTER OF THE CHILDREN'S ACT

(NO. 8 OF 2001)

AND

IN THE MATTER OF BABY C M

RULING

1. By a judgement dated 23rd November 2012, Mugo J. allowed the adoption of Baby C M, now known as S I R, by V R I. The said adoption order has since been registered in the register of adoptions by the Registrar-General.
2. The adoptive mother of the child has now come to court by an application dated 2nd September 2015 seeking two principal orders: that the child be presumed Kenyan by birth and the Director of Immigration be ordered to issue the said child with a Kenyan passport.
3. From the record before me, the child in question was found abandoned within the Dagoretti/Riruta area of Nairobi. A report of the abandonment was made to the police at the Riruta Police Station. She was placed with the Abandoned Baby Centre by the Nairobi Children's Court, and it was from that institution that her adoption was arranged by the Little Angels Network. Neither her parents nor her relatives were traced.
4. As the child was found abandoned and no relatives were traced, her parentage is unknown. It cannot be said for sure whether she was born of Kenyan parents or not. However, since she was found abandoned within Kenyan borders, it can be presumed that she was Kenyan by birth.
5. Ideally, the Kenya Citizenship and Immigration Act, Cap 172, Laws of Kenya, under the relevant law, a declaration that a child is Kenyan by birth or should be presumed to be Kenyan by birth should be made by the Children's Court at the point of the committal of the child to an institution for care and protection. Since the Children's Court did not make that presumption, this court can, seized as it is of the matter, quite properly make the said presumption.
6. If the child is presumed to be Kenya by birth on account of her having been found within Kenyan boundaries, it follows that she should enjoy all the rights that accrue to Kenyan citizens under the Constitution and the Kenya Citizenship and Immigration Act, including the right to hold a Kenyan passport.
7. Consequently, I do hereby allow the application dated 2nd September 2015 in terms of prayers 1 and 2 thereof.

DATED, SIGNED and DELIVERED at NAIROBI this 18TH DAY OF DECEMBER, 2015.

W. MUSYOKA

JUDGE