

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE COURT OF APPEAL**

**Civil Appeal No. 160 of 2011**

**Between**

**THE CHIEF IMMIGRATION OFFICER  
THE MINISTER OF NATIONAL SECURITY**

**Appellants**

**And**

**SUSAN RUTH JACKSON  
JORDAN MATTHEW LEIBA (an infant)  
(suing by his next friend and mother Susan Ruth Jackson)**

**Respondents**

**PANEL: I. ARCHIE, C.J.  
P. JAMADAR, J.A.  
N. BERAUX, J.A.**

**APPEARANCES: N. Byam, R. Chaitoo and M. Benjamin for the  
appellants  
I. Benjamin, R. Heffes-Doon and M. Harper for the  
respondents**

**DATE DELIVERED: 3 July 2017**

I agree with the judgment of Bereaux J.A. and I have nothing to add.

I. Archie  
Chief Justice

I too agree.

P. Jamadar  
Justice of Appeal

**JUDGMENT**

**Delivered by Bereaux, J.A.**

## **Introduction**

[1] This is an appeal from a decision of the High Court. In his decision delivered on 7<sup>th</sup> June 2011, the judge declared the Chief Immigration Officer's decision to seize the respondents' passports, and his refusal to restore them to be illegal, null and void and of no effect. He found the first respondent, Susan Ruth Jackson (Susan), was a citizen of Trinidad and Tobago by virtue of her lawful adoption by Trevor Anthony Jackson and Jean Umilta Jackson who, at the time of the adoption order, were citizens of the Republic of Trinidad and Tobago by birth. He found that Susan's son, Jordan Matthew Leiba (Jordan), the second respondent, is a citizen of the Republic of Trinidad and Tobago by descent. (When necessary I shall also refer to Susan and Jordan collectively as 'the respondents.') He also declared that Susan and Jordan were entitled to have their passports renewed or reissued. The judge however found that there was no breach of the respondents' constitutional rights under sections 4(g) and 5(1)(a) of the Trinidad and Tobago Constitution.

[2] The Chief Immigration Officer and the Minister of National Security have appealed the grant of the declarations and the respondents have cross-appealed the judge's finding that there was no breach of sections 4(g) and 5(1)(a) of the Constitution.

[3] The broad question is whether Susan can claim citizenship pursuant to section 17(3) of the Constitution or by virtue of her adoption under section 6 of the Citizenship of the Republic of Trinidad and Tobago Act Chap 1:50 (the Citizenship Act). At the heart of the controversy is whether Susan's adoption in Jamaica by the Jacksons in 1983 entitles her to Trinidad and Tobago citizenship pursuant to either section. Section 17(3) of the Constitution provides:

*“A person born outside Trinidad and Tobago after the*

*commencement of this Constitution shall become a citizen of Trinidad and Tobago at the date of his birth if at that date either of his parents is, or was, but for his parent's death, a citizen of Trinidad and Tobago otherwise than by descent, so however that, in the case of a person employed in service under the Government or under an authority of the Government that requires him to reside outside Trinidad and Tobago for the proper discharge of his functions, this subsection shall be read as if the words "otherwise than by descent" were deleted."*

Section 6 of the Citizenship Act provides:

*"Where under a law in force in Trinidad and Tobago relating to the adoption of children, an adoption order is made by a competent Court in respect of a minor who is not a citizen of Trinidad and Tobago, then, if the adopter, or in the case of a joint adoption, either of the adopters, is a citizen of Trinidad and Tobago, the minor shall become a citizen of Trinidad and Tobago as from the date of the order."*

[4] At the time of her adoption in Jamaica in 1983, there was no provision in the Adoption of Children Act Chapter 46:03 (which was enacted in 1946 as Act No. 31 of 1946) which expressly recognised a foreign adoption order as being validly made. However the 1946 Adoption of Children Act was subsequently repealed and replaced by Act No. 67 of 2000 (the 2000 Act). Section 37 of the 2000 Act expressly provided for the recognition of adoption orders validly effected overseas. However, at the time of the events which led to the filing of this action and at the time of the judge's decision, section 37 did not have legal effect.

[5] Section 37 provides as follows:

*"Where a child has been adopted by a national or resident of*

*Trinidad and Tobago, whether before or after the coming into force of this Act, in any place outside of Trinidad and Tobago according to the law of that place, then for the purposes of this Act and all other written law, the adoption shall have the same effect as an adoption order validly made in accordance with this Act.”*

The 2000 Act purported to repeal and replace the Adoption of Children Act, No. 31 of 1946. Section 37 was a new provision. A minor amendment was effected to it by Act No. 4 of 2015, resulting in its present wording. The substance of the amendment is not relevant to the appeal. The 2000 Act was not proclaimed until 18<sup>th</sup> May, 2015. Consequently, Act No. 31 of 1946, then reflected in the consolidated laws as Chap. 46:03 and which gave no recognition to foreign adoption orders, continued in force until 17<sup>th</sup> May, 2015.

[6] The result of the proclamation of the 2000 Act is that Susan’s adoption is now recognised in Trinidad and Tobago as valid, from the date of the order of adoption in 1983. The conjoint effect of section 37 of the 2000 Act and section 6 of the Citizenship Act is that Susan and Jordan are now citizens of Trinidad and Tobago from 25<sup>th</sup> May, 1983 (the date of Susan’s adoption order) and 17<sup>th</sup> March 2004 (the date of Jordan’s birth). But such citizenship (though retroactive) only had legal effect from 18<sup>th</sup> May 2015, which is subsequent to the events which led to the filing of this action as well as subsequent to the judge’s decision. It means that the issuing to the respondents of the various passports has now been validated and the respondents are entitled to the return of the old passports with the relevant Canadian landed immigration status and the US visas. This is an important consideration when the issue of costs is to be determined.

[7] This effectively resolves this appeal but in deference to the submissions of counsel on both sides I shall go on to consider the arguments they have put forward in this appeal. Further, Susan and Jordan have maintained their entitlement to citizenship from the outset of this action and the appeal proceeded on this basis taking into account the provisions of the Adoption of Children Act as enacted in 1946. I shall refer to it as the 1946 Act.

## **Facts**

[8] Susan was born in Jamaica on the 5<sup>th</sup> November 1981. By an adoption order of the 25<sup>th</sup> May 1983 of the Supreme Court of Judicature of Jamaica (Family Court Division) Trevor Anthony Jackson and Jean Umilta Jackson (the Jacksons) adopted her. The Jacksons, citizens of Trinidad and Tobago, were domiciled in Jamaica from 1974 to July 2010 after which they returned to Trinidad and Tobago. They brought up Susan as a citizen of Trinidad and Tobago and she has always considered herself to be one.

[9] The Jacksons applied at the Trinidad and Tobago High Commission office in Kingston, Jamaica for a Trinidad and Tobago passport to be issued to Susan. All relevant documents were supplied. No queries were raised about her citizenship. Her first passport was issued to her on the 14<sup>th</sup> July 1983. Her passports were renewed on three subsequent occasions, 1<sup>st</sup> July 1993, 15<sup>th</sup> March 1995 and 2000 (no date provided). The last such passport, numbered T678180 was valid to 26<sup>th</sup> June 2010.

[10] Jordan was born in Jamaica to Susan on 17<sup>th</sup> March 2004 by a Jamaican father. Susan is now divorced from Jordan's father and has sole control and custody of Jordan. In December 2004, the Trinidad and Tobago High Commission in Kingston issued a Trinidad and Tobago Passport T1078403 to Jordan. This passport was valid to December 2009.

[11] Susan's and Jordan's passports were seized by the Trinidad and Tobago consulate office, Toronto, Canada on 20<sup>th</sup> September 2010 after she had attended that office on 13<sup>th</sup> September 2010 to obtain renewals. Susan and Jordan had emigrated to Canada from Jamaica she having secured landed immigrant status as a citizen of Trinidad and Tobago. Both passports had been endorsed with their Canadian immigration status as have been their visas for multiple entry into the USA. The passports of Susan and Jordan expired in June 2010 and December 2009 respectively. Susan applied at the Trinidad and Tobago consulate in

Toronto for an extension. She visited the consulate in September 2010, accompanied by her parents, the Jacksons, who were visiting Canada at the time. She was told to return one week later. On her return visit to the consulate the passports were not returned. She was questioned about her family background. She was told that they were not citizens of Trinidad and Tobago and therefore not entitled to passports.

[12] Susan and Jordan were granted leave to apply for judicial review on December 14, 2010 challenging the decisions of the Chief Immigration Officer to revoke/seize the passports. The Chief Immigration Officer argued that the actions of the consulate were justified because they were never citizens of Trinidad and Tobago and were not entitled to be issued, or hold passports of the Republic of Trinidad and Tobago.

**The case for Susan and Jordan (as taken from her case statement)**

*Susan*

[13] The case for Susan is simply stated. The common law of Trinidad and Tobago recognises an adoption order made by a foreign court if the adopting parents are domiciled and the child is ordinarily resident in the jurisdiction of that court. In this case, Susan was born in Jamaica on 5<sup>th</sup> November 1981. The Jacksons, both of whom were citizens of Trinidad and Tobago by birth, adopted her pursuant to an adoption order of the Supreme Court of Jamaica. At the date of the adoption order the Jacksons were domiciled in Jamaica. By its recognition of foreign adoptions the common law of Trinidad and Tobago gives the adopted child the self-same rights and benefits as a child adopted in Trinidad and Tobago. The child is to be treated under Trinidad and Tobago law as if she had been adopted in this jurisdiction. The Jacksons are citizens of Trinidad and Tobago who were domiciled in Jamaica and Susan was ordinarily resident there as at the date of the adoption order. Accordingly under Trinidad and Tobago law, Susan is the child of the Jacksons and is entitled to the rights and benefits in law of a child that had been born to the Jacksons. Having regard to these stated principles, Susan

is a citizen of Trinidad and Tobago by virtue of section 17(3) of the Constitution of the Republic of Trinidad and Tobago or section 6 of the Citizenship Act.

[14] She is a citizen under section 17(3) of the Constitution because:

- i. The section provides that a person born outside Trinidad and Tobago shall become a citizen at the date of her birth if at that date either of her parents was a citizen, otherwise than by descent.
- ii. At the date of Susan's birth, her parents Trevor and Jean Jackson, were citizens of Trinidad and Tobago by birth.

She is a citizen under section 6 of the Citizenship Act because:

- i. The section provides that where, under a law in force in Trinidad and Tobago relating to the adoption of children an adoption order is made by a competent court in respect of a minor who is not a citizen of Trinidad and Tobago, then if the adopter is a citizen of Trinidad and Tobago, the minor shall become a citizen as from the date of the order.
- ii. The Supreme Court of Judicature of Jamaica was created by an enactment of the Jamaica Parliament, namely, the Judicature (Supreme Court) Act Cap. 180. It is a competent court.
- iii. The effect of the recognition by the common law of Trinidad and Tobago of the adoption order of the Supreme Court of Judicature of Jamaica is that an adoption order was made by a competent court "*under a law in force in Trinidad and Tobago*" within the meaning of section 6 of the Citizenship Act.

Accordingly Susan is entitled to the possession or the retention of her Trinidad and Tobago passport.

*Jordan*

[15] Jordan being the child of Susan is consequently a citizen of Trinidad and Tobago. He was born on the 17<sup>th</sup> March 2004 in Jamaica.

Section 5 of the Citizenship Act provides that the Minister of National Security shall cause a child born outside of Trinidad and Tobago, of a citizen of Trinidad and Tobago by descent to be granted a certificate of citizenship upon receipt of the prescribed application. Accordingly Jordan is either entitled to the grant of a certificate of citizenship and/or to be treated as a citizen of Trinidad and Tobago as he is a child of the first applicant, a citizen of Trinidad and Tobago by adoption. The argument proceeds on the basis that Susan is a citizen by descent.

[16] Alternatively Jordan is a resident of Trinidad and Tobago by reason of the fact that he is a child of a citizen of Trinidad and Tobago, is a minor and is dependent on and living with his parent pursuant to section 5(1)(e) of the Immigration Act Chap 18:01. This point is not relevant to the outcome of the appeal.

### **Judge's decision**

[17] Essentially the judge upheld the contentions of Mr. Benjamin, counsel for the respondents. He held as follows:

- (i) The effect of the adoption under Jamaican law which is identical to the law of Trinidad and Tobago and the UK in 1965, is to extinguish the rights of Susan's birth parents and confer those rights to the Jacksons, her adoptive parents.
- (ii) The adoption order made in Jamaica will be recognised in Trinidad and Tobago at common law if at the time of the adoption order, the adopter was domiciled in Jamaica and the child is resident there. This arises both out of the comity of nations and on principle – applying Lord Denning in **Re Valentine's Settlement [1965] Ch 831**.
- (iii) Susan is a citizen of Trinidad and Tobago by virtue of section 6 of the Citizenship of the Republic of Trinidad and Tobago Act Chap 1:50 (the

Citizenship Act) and section 17(3) of the Constitution of Trinidad and Tobago:

- (a) she became a citizen under section 6 because pursuant to section 6, the law in force in Trinidad and Tobago includes the common law which recognises valid foreign adoption orders made by a competent foreign court and the Jacksons who adopted Susan were citizens of Trinidad and Tobago at the time that the adoption order was made.
  - (b) she became a citizen under section 17(3) because at the date of her birth her parents were citizens of Trinidad and Tobago otherwise than by descent. This is so because her adoptive parents are equated to birth parents under the Adoption Acts of Jamaica, Trinidad and Tobago and the United Kingdom. Susan had no other parent after the adoption order and the status of Susan's adoptive parents as her *de jure* parents is recognised at common law. In this regard section 17(3) of the Constitution must be interpreted generously, liberally and purposively.
- (iv) Jordan became a citizen of Trinidad and Tobago by descent pursuant to sections 5 and 8 of the Citizenship Act by virtue of Susan being a citizen of Trinidad and Tobago.

[18] He granted, inter alia, the following reliefs:

- (a) A Declaration is granted that the First Defendant's decision to seize, and his subsequent decision to refuse to restore, ("the decisions") to the First Claimant the First Claimant's Trinidad and Tobago Passport No. T678180 and the Trinidad and Tobago Passport No. T1078403 ("the Passports") of her son, the Second Claimant, is illegal, and is *ultra vires*, invalid, null and void, and of no effect;
- (b) An Order of Certiorari is granted to remove into this Court and quash the said decisions;
- (c) A Declaration is granted that the First Claimant is a citizen of Trinidad and Tobago by reason [of] the First Claimant's lawful adoption on the 25th May, 1983 by Trevor Anthony Jackson and Jean Umilta Jackson, citizens of

the Republic of Trinidad and Tobago by birth;

- (d) A Declaration is granted that the Second Claimant is a citizen of the Republic of Trinidad and Tobago by reason of the fact that he is born of a citizen of Trinidad and Tobago.
- (e) A declaration is granted that the claimants are entitled to the renewal and/or the reissue of the said passports.

He also ordered the appellants to pay the respondents' costs to be assessed in default of agreement.

### **Issues on appeal**

I shall consider therefore:

- (i) The common law position in Trinidad and Tobago as to the recognition of a foreign adoption order
- (ii) Its effect on the citizenship of the adopted child having regard to section 17(3) of the Constitution and
- (iii) Its effect on the citizenship of the adopted child having regard to section 6 of the Citizenship Act.

### **Law, Analysis and Conclusions**

*Susan's citizenship*

- (i) *Recognition of a foreign adoption order by the common law*

[19] Mr. Benjamin relied on the decision of the English Court of Appeal in **Re Valentine's Settlement (supra)**. The dictum of Lord Denning is relevant. At page 842 letter B:

*“But when is the status of adoption duly constituted? Clearly it is so when it is constituted in another country in similar circumstances as we claim for ourselves. Our courts should recognise a jurisdiction which mutatis mutandis they claim for themselves: see Travers v. Holley. We claim jurisdiction to make an adoption order when the adopting parents are domiciled in this country and the child is resident here. So also, out of the comity of nations, we should recognise an adoption order made by another country when the adopting parents are domiciled there and the child is resident there.*

*Apart from international comity, we reach the same result on principle. When a court of any country makes an adoption order for an infant child, it does two things: (1) it destroys the legal relationship theretofore existing between the child and its natural parents, be it legitimate or illegitimate; (2) it creates the legal relationship of parent and child between the child and its adopting parents, making it their legitimate child. It creates a new status in both, namely, the status of parent and child. Now it has long been settled that questions affecting status are determined by the law of the domicile. This new status of parent and child, in order to be recognised everywhere, must be validly created by the law of the domicile of the adopting parent. You do not look to the domicile of the child: for that has no separate domicile of its own. It takes its parents' domicile. You look to the parents' domicile only. If you find that a legitimate relationship of parent and child has been validly created by the law of the parents' domicile at the time the relationship is created, then the status so created should be universally recognised throughout the civilised world, provided always that there is nothing contrary to public policy in so recognising it.”*

He added at page 843 letter B:

*“I ought to say, however, that in order for adoption to be recognised everywhere, it seems to me that, in addition to the adopting parents being domiciled in the country where the order is made, the child should be ordinarily resident there: for it is the courts of ordinary residence which have the pre-eminent jurisdiction over the child: see In re P. (G. E.) (An Infant). The child is under their protection and it would seem only right that those courts should be the courts to decide whether the child should be adopted or not.*

*In my opinion, therefore, the courts of this country will only recognise an adoption in another country if the adopting parents are domiciled there and the child is ordinarily resident there.”*

Lord Denning went on to note that for the purposes of succession, English law did not confer on adopted children the same rights and benefits as natural born children but rather the same rights and benefits as a child adopted in England by an English adoption order. The trial judge accepted Mr. Benjamin’s submission.

[20] I agree with both the judge and Mr. Benjamin on this question. The common law principles set out in **Re Valentine’s Settlement** are applicable to Trinidad and Tobago. Under the common law and on principle, an adoption order made in Jamaica will be recognised in Trinidad and Tobago, if at the time of the order the adopting parents were citizens of Trinidad and Tobago, who were domiciled in Jamaica and the child was resident there. The facts of this case satisfy all the criteria set out in **Re Valentine’s Settlement**. But it does not follow that consequent upon that adoption, Susan is a citizen of Trinidad and Tobago. One must have regard to the specific provisions of section 17(3) of the Constitution and section 6 of the Citizenship Act. When those provisions are considered, Mr. Benjamin’s contentions cannot be accepted and the judge was wrong to come to the conclusion to which he came.

(ii) *Section 17(3) of the Constitution*

[21] Section 17(3) provides:

*“(3) A person born outside Trinidad and Tobago after the commencement of this Constitution shall become a citizen of Trinidad and Tobago at the date of his birth if at that date either of his parents is, or was, but for his parent’s death, a citizen of Trinidad and Tobago otherwise than by descent, so however that, in the case of a person employed in service under the Government or under an authority of the Government that requires him to reside outside Trinidad and Tobago for the proper discharge of his functions, this subsection shall be read as if the words “otherwise than by descent” were deleted.”*

Section 15(1) of the 1946 Act is also relevant. It provides:

*“For all purposes, as from the date of the making of an adoption order -*  
*(a) the adopted child becomes the child of the adopting parent and the adopting parent becomes the parent of the adopted child; and*  
*(b) the adopted child ceases to be the child of the person who was his parent before the adoption order was made and that person ceases to be the parent of the adopted child,*  
*as if the adopted child had been born in lawful wedlock to the adopting parent.”*

Mr. Benjamin submitted that in order to qualify as a citizen under section 17(3) of the Constitution:

- (i) A person must be born outside of Trinidad and Tobago
- (ii) Such person must be born to parents who were citizens of Trinidad and Tobago
- (iii) The parents must have been citizens of Trinidad and Tobago otherwise than by descent.

I agree.

[22] He submitted further that Susan qualified as a citizen of Trinidad and Tobago because:

- (i) She was born outside of Trinidad and Tobago (in Jamaica)
- (ii) The Jacksons are citizens of Trinidad and Tobago by birth; that is to say, they are citizens otherwise than by descent.

He submitted that the effect in law of the Trinidad and Tobago courts' recognition of the Jamaican court's order as effectual and valid, was sufficient to render her the natural child of the Jacksons and to render them her "parents" within the meaning of section 17(3) of the Constitution. Accordingly, a conclusion that Susan is the child of the Jacksons and that they are her parents just as if she had been born in lawful wedlock to them (per section 15(1) of the 1946 Act) is consistent with constitutional interpretation given the Constitution's recognition of the right to family life. At the date of her birth her "*parents*" were citizens of Trinidad and Tobago within the meaning of section 17(3) of the Constitution. Susan Jackson is therefore a citizen of Trinidad and Tobago by descent.

[23] The submission is misconceived. Section 17(3) confers citizenship on a person born abroad to parents who are citizens of Trinidad and Tobago (otherwise than by descent). It is intended to apply to natural born children of citizens of Trinidad and Tobago (otherwise than by descent). The fact of the child's birth to such citizens gives him or her citizenship as at the date of his or her birth. It is not intended to apply to adoptees at all. One must look to the Act which confers such citizenship by its specific provisions.

[24] In this case and in agreement with Mr. Byam, Susan does not come within section 17(3) since at the date of her birth, her natural parents were not citizens of Trinidad and Tobago. Section 15(1) of the 1946 Act does not have retroactive effect to make the Jacksons Susan's parents at the date of her birth. It destroys the relation between the natural parent and the adopted child as at the date of the order (emphasis added).

[25] The judge held that section 17(3) must be interpreted liberally and purposively. Mr Byam challenged that approach and submitted that such an approach did not apply to section 17(3). In my judgment even if a liberal or purposive construction is placed on section 17(3) it cannot have the meaning ascribed to it by the judge. Section 17(3), given its context, is referring to the natural parents of the child and not the adoptive parents. It gives citizenship, by reason of their birth, to children born of natural born citizens, or naturalised citizens, of Trinidad and Tobago. It has no relation to adoption whatever. Indeed it is precisely because the 1946 Act did not recognise foreign adoption orders whether expressly or by the common law, that section 37 was included in the 2000 Act. It is lamentable that its proclamation took so long. While section 15 of the 1946 Act has the legal effect of destroying the relationship of parent and child between the natural parent and the adopted child it does not deny the fact of the child's birth, neither does it retroactively confer parenthood on the adoptive parents as at the birth of the child. Thus, while it is true that at the date of Susan's birth, the Jacksons were citizens of Trinidad and Tobago, they were not then her parents. Such a deeming required a clear statement from Parliament. I turn to the Citizenship Act.

(iii) *Section 6 of the Citizenship Act*

[26] Section 6 of the Citizenship Act provides:

***“Where under a law in force in Trinidad and Tobago relating to the adoption of children, an adoption order is made by a competent Court in respect of a minor who is not a citizen of Trinidad and Tobago, then, if the adopter, or in the case of a joint adoption, either of the adopters, is a citizen of Trinidad and Tobago, the minor shall become a citizen of Trinidad and Tobago as from the date of the order.”***

Mr. Benjamin submitted, and the trial judge accepted, that the adoption order

made by the Jamaican Supreme Court is recognised in Trinidad and Tobago by common law. The judge found that for the purposes of section 6 the common law was a “*law in force*” in Trinidad and Tobago.

Before us Mr. Benjamin maintained his submission that the adoption order of the Jamaican Supreme Court was made by a “*competent court*” and since the Jacksons were both citizens of Trinidad and Tobago, at the time of the order, Susan became a citizen of Trinidad and Tobago as from the date of the order.

[27] I do not agree. The term “*law in force in Trinidad and Tobago relating to the adoption of children*” relates to a specific statute, enacted in Trinidad and Tobago. In this case it is the 1946 Act. It is concerned with the adoption in Trinidad and Tobago of a child who is not a Trinidad and Tobago citizen, pursuant to the provisions of the 1946 Act. The 1946 Act did not recognise foreign adoption orders. It does not refer to the common law nor to any foreign statute. “*Competent court*” refers to a court in Trinidad and Tobago; in this case it is a court as defined by section 17(1) of the 1946 Act as follows:

***“The Court having jurisdiction to make adoption orders under this Act shall be the High Court or, at the option of the applicant, any Court of summary jurisdiction within the jurisdiction of which either the applicant or the child resides at the date of the application for the adoption order.”***

Section 6 does not have extra-territorial effect. It confers citizenship on adoptees who are not citizens, when the adoption was made pursuant to the 1946 Act. Such citizenship took effect as at the date of the adoption order. Section 6 has no application whatever to section 17(3) of the Constitution.

Accordingly Susan was not at the time of the grant of her passports a citizen by descent and was not entitled to any Trinidad and Tobago passport until the proclamation of the 2000 Act.

[28] Mr. Benjamin relies on sections 5 and 8 of the Citizenship Act. Section 5 provides:

*“5. (1) The Minister shall cause a child born outside of Trinidad and Tobago of a citizen of Trinidad and Tobago by descent to be granted a certificate of citizenship of Trinidad and Tobago upon receipt of the prescribed application made -*

*(a) by the responsible parent or the guardian of such child before the child attains full age; or*

*(b) by the child within one year of his attaining his majority according to the law of the country of which he is a citizen or on his attaining full age.*

*(2) A person to whom a certificate of citizenship of Trinidad and Tobago is granted under subsection (1) is a citizen of Trinidad and Tobago by descent for all the purposes of the law relating to citizenship save that nothing in subsection (1) applies to a child of a person who became a citizen of Trinidad and Tobago by reason of that subsection.”*

Section 8 provides:

*“8. (1) The Minister may cause the minor child born outside Trinidad and Tobago of a citizen of Trinidad and Tobago to be registered as a citizen of Trinidad and Tobago upon receipt of the prescribed application made by the responsible parent or the guardian of such child.*

*(2) The Minister, in such special circumstances as may be prescribed, may cause any minor to be registered as a citizen of Trinidad and Tobago.*

*(3) A person who becomes a citizen of Trinidad and Tobago by virtue of this section shall cease to be a citizen of Trinidad and*

*Tobago one year after attaining full age unless he has taken the oath of allegiance.”*

Given my conclusion in respect of Susan, Jordan could not then claim citizenship through Susan and did not then qualify under either of sections 5 or 8 of the Citizenship Act.

### **The order**

[29] The appeal must be allowed in part. The appellants would ordinarily have won the entire appeal but for the proclamation of the 2000 Act. The initial decision to seize the passports and to refuse to restore them was justified because at the dates of seizure and refusal, the 2000 Act was not yet in force and the respondents did not then qualify as citizens for the reasons given. The judge's declaration set out at paragraph 18 (a) above that these acts were illegal must be set aside, so too his quashing of the decision set out at paragraph 18 (b). However the effect of the proclamation of the 2000 Act, is that the declarations at paragraph 18 (c), (d) and (e) must be upheld albeit for different reasons. Further, I shall direct that the respondents' passports T678180 and T1078403 respectively be attached to the new passports which are reissued to them.

### **The respondent's cross-appeal**

[30] In light of our findings that the initial seizure of the passports was justified the allegation that the respondent's freedom of movement was infringed cannot succeed. The cross-appeal is dismissed.

[31] The delay in giving this decision is regretted. On the issue of costs, I consider that both on appeal and below, each party should bear their own costs. The respondents were led by the Trinidad and Tobago High Commission in Jamaica to believe that they were entitled to the passports. They brought this action to challenge the seizure of the passports. This was reasonable in the circumstances. The respondents are now entitled to the return of the passports, albeit for different reasons from those given by the trial judge. But the appellants

were not acting unlawfully when they seized the passports, as the law in existence at that time justified their actions. The costs order is therefore the fairest that can be made in the circumstances.

Nolan P.G. Breaux  
Justice of Appeal