



**In re Adoption of Baby GMN (Adoption Cause E002 of 2024)
[2025] KEHC 1542 (KLR) (21 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1542 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
ADOPTION CAUSE E002 OF 2024
JRA WANANDA, J
FEBRUARY 21, 2025
IN THE MATTER OF THE ADOPTION OF BABY GMN**

IN THE MATTER OF

RWK 1ST APPLICANT

PDH 2ND APPLICANT

JUDGMENT

1. Before this Court is the Amended Originating Summons dated 6/02/2025 filed through Messrs Kigen & Co. Advocates, and initially filed as the Originating Summons dated 5/02/2024. The orders sought are as follows:
 - i. That JM [name abridged] and MN [name abridged] of P.O. Box [xxxxxxx] be appointed Guardian Ad Litem in this Cause.
 - ii. That the Applicants be authorized to adopt Baby GMN [name abridged].
 - iii. That the Court do issue further orders as may be deemed fit to meet the interests of justice.
 - iv. That upon granting prayer (2) above and discharge of the guardian ad litem, JM and MN of P.O. Box 30500 Lodwar be appointed as the Legal Guardians of the minor herein.
 - v. That upon adoption, the child’s name be changed from GMN to GMH.
2. The amendment aforesaid introduced prayers (iv) and (v) above, respectively. I also note that while the initial Summons referred to the proposed Guardians ad Litem, who are also the proposed Legal Guardians, as JMM and MNK, respectively, the amended version refers to them simply as JM and MN. Since the copies of their National Identity Cards and also the Affidavits sworn by them bear the versions, JMM and MNK, respectively, as appears in the initial Summons, I presume that the currently presented versions of JM and MN, respectively, are simply typographical errors. I will therefore proceed



in terms of the initial versions, JMM and MNK, respectively, as being the correct descriptions of the proposed Guardians.

3. The Application is supported by the respective Affidavits sworn by the Applicants. Mr. Osewe Atieno Advocate appeared for the Applicants.
4. The 1st Applicant, RWK, in her Affidavit, deponed that she is a citizen of the Republic of Kenya and resides with her husband, the 2nd Applicant at [xxxxxx] Apartments in Kapsoya, within Uasin Gishu County, that she is a housewife and was born on 4/08/1992, and that she intends to reside in Kenya indefinitely. She stated further that the child the subject hereof is her biological son, that she has another child with the 2nd Applicant, that the child the subject hereof was abandoned by his biological father whose whereabouts are unknown to date and that since she gave birth to the child, she has been in continuous care and possession of him. She also stated that she has been approved by the Little Angels Network, a registered Adoption Agency to adopt the child and which has also declared him free for adoption. She deponed that the child has never seen nor does he have any knowledge of his biological father who has never bothered to look for him after the 1st Applicant got pregnant, and that efforts to trace him have proved futile. She deponed further that since the child has been completely abandoned by the biological father, the father's consent ought to be dispensed with since it is not possible to obtain it. She urged that the child is one in need of care and protection which she is ready and willing to provide, and which will be in his best interest. She further deponed that by an Application which she made before the Children's Court at Eldoret, she was, on 22/06/2023, granted the sole legal and physical custody of the child and that the child has tremendously bonded with her and his step-brother over the years. Lastly, she prayed that if an adoption order is made then it is proposed that the child be known as Baby GMH.
5. On her part, the 2nd Applicant deponed that he is Polish by citizenship and birth and Caucasian by race, that he resides with his wife, the 1st Applicant at [xxxxxxxxxx] Apartments in Kapsoya Estate and that he intends to reside in Kenya indefinitely. He then gave particulars of his passport number, Foreigner certificate, and his resident permit. He stated that the subject child is his step-son and that he also has another child with the 1st Applicant, that the child the subject hereof was abandoned by his biological father whose whereabouts are unknown to date and that since he met the 1st Applicant in July 2020, he and the 1st Applicant have been in continuous possession and care of the child. He, too, urged that the child has been approved and declared free for adoption, that the child has never seen nor he does he have any knowledge of his biological father, their efforts to trace the biological father have proved futile and that for this reason, the biological father's consent ought to be dispensed with. He, too, urged that the child is in need of care and protection, which he is ready and willing to provide, that the child has bonded with him and his step-brother, and that if an adoption order is made, then it is proposed that the child be known as GMH.
6. By a Further Supporting Affidavit sworn jointly by the Applicants on 6/02/2025, they deponed that the amendment of the Originating Summons is for the purposes of including prayers for appointment of a Legal Guardian and for change of the minor's name. They deponed that it is necessary that the minor's surname be changed upon the adoption order being granted to enable him assume the name of his adoptive father, and that it is also necessary that the Court appoints a Legal Guardian who may take care and/or protect the minor's well being in the event of the absence of the Applicants. They further deponed that the proposed Legal Guardians have both consented to, and are willing and ready to be appointed as such.
7. The proposed Guardians Ad Litem attended Court and testified on 1/08/2024. The 1st proposed Guardian Ad Litem, MNK, testified as PW1. She referred to her Affidavit and Consent filed herein



and stated that the 1st Applicant is her elder sister. She undertook, once appointed, to give a Report as per her duties under the Children’s Act. On her part, the 2nd proposed Guardian Ad Litem, JMM, testified as PW2. He stated that he is the husband of the 1st proposed Guardian Ad Litem. He, too, confirmed that he understood the nature of his duties, if appointed. Upon hearing the two, I allowed the prayer and appointed them as the joint Guardians Ad Litem.

8. Subsequently, the Children’s Officer testified as PW3 on the same 1/08/2024 while the Applicants and testified as PW4 and PW5, respectively, on 4/08/2024.
9. PW3, Diana Jelimo Komen, from the Directorate of Children’s Services, Uasin Gishu County, stated that she visited the Applicants’ residence, interviewed the Applicants, and ascertained that they were a legally married couple and that the child is the biological son of the 1st Applicant. She stated further that she also made an enquiry with the child and observed that he relates well with the 2nd Applicant whom he regards as his father as he does not know any other father. She also stated that she ascertained that the couple have another biological son of their own who is about 3 years old and that the two children relate very well. She therefore recommended that the “kinship” adoption be allowed as it is in the best interests of the child and referred to her Report filed in Court on 21/06/2023. She confirmed that she never made any contact with the biological father of the child as she was informed that he “disappeared” as soon as the 2nd Applicant got pregnant and added that even in the custody Application, the biological father’s consent was dispensed with.
10. PW4 was the 1st Applicant, RWK. She adopted her Statement. She then reiterated the matters already captured in her Affidavit recounted above and produced a Marriage Certificate indicating that she got married to the 2nd Applicant in the year 2020. She stated that the child was born on 30/01/2017, goes to school at [xxxxxxx] Academy and lives with them as he is a day scholar. She reiterated that she parted ways with the child’s biological father, one DN, after she told him that she had fallen pregnant, and that he even changed his phone number and relocated from where he used to live. She reiterated that she has not been in communication with him, he has never met him again ever since, and that he has never taken the responsibility of a father at all. She also reiterated that since obtaining custody of the child vide Eldoret Magistrate’s Children’s Court Misc. No. E031 of 2023, she has since been taking care of the child. She stated further that when she met her current husband, the 2nd Applicant, she informed him of her plight and he immediately started sending him money for the child’s upkeep. She also confirmed that she was interviewed by the Children’s officer.
11. PW5, the 2nd Applicant, PDH, too, adopted his Statement. He then testified that he was born in the year 1984, he has lived in Kenya, specifically, Eldoret, for almost 4 years now, that he is a retired football player and that he has a pension payable, at monthly intervals, for the rest of his life, payable by the Government of Austria where his family was resident. He stated that the child is like his son because he met his wife, the 1st Applicant, in the year 2019 by which date she already had the child and confirmed that he is legally married to the 1st Applicant. He testified that he has lived with the 1st Applicant and the child for 4 years now and reiterated that he has another child with the 1st Applicant who also lives with them and that the two children relate very well and even share a bedroom. He stated that a social inquiry was conducted by the Directorate of Children’s Services and he was also interviewed by representatives of the Little Angels Network, and he was found to be fit to adopt the child and who was also declared free for adoption. He stated that he intends to reside in Kenya to continue living with the baby. He also testified that he has met the child’s grandmother and the 1st Applicant’s siblings, but the grandfather is not there. He stated further that has not been married before and that he met the 1st Applicant, through an online platform, after which, upon his invitation, the 1st Applicant went to visit him when he was in India, they later fell in love and it is thereafter that she joined her in Kenya.



12. Upon close of the hearing, I directed that the Applicants' Counsel to file written Submissions which he did. The Submissions is dated 12/10/2024.
13. Counsel submitted that the child, born on 30/01/2017, has been under the sole care of the 1st Applicant after the biological father disappeared before the child was born, that the Applicants now wish to do a "kinship" adoption to enable the child to be formally recognized as the son of the 2nd Applicant which will facilitate the 2nd Applicant to provide him with full parental support. After recounting the witness' testimony, he submitted that Section 193 of the Children's Act provides for "kinship" adoption by which the same may be made in favour of a relative of the child. He urged that in this case, it has been demonstrated that the 1st Applicant is the biological mother of the child who now seeks to adopt him, together with her spouse, the 2nd Applicant. He also cited Section 186(1) of the *Children Act* and submitted that it empowers the Court to make an adoption order in favour of two spouses who make a joint Application.
14. He urged further that as evidenced by the Marriage Certificate produced, the two Applicants are such spouses who are seeking a joint adoption order. According to him therefore, the Applicants have met all the requirements under Section 186 of the Act. As regards the consent required under Section 186(8) (b), he submitted that Section 187(1) provides for the power to dispense with such consent where, as herein, the parent or guardian of the child has abandoned, neglected, or persistently failed to maintain the child. He reiterated that in this case, the child's biological father abandoned the 1st Applicant when she informed him that she was expectant with the child, that ever since, she has not been able to trace him and does not know his whereabouts. He therefore submitted that the child's biological father has therefore never been into his life, has never participated in the child's upbringing and has never seen/met the child. He cited the case of *In the matter of Application for Adoption of K M (Adoption Cause E018 of 20221 (20221 KEHC 13503 (KLR)1 Family (23 September 20221 (Judgment)* and also the case of *In re of an Application for the Adoption of Child RFM (20151 KEHC 7955 (KLR1)*.
15. Counsel submitted further that Section 8(1) and (2) of the *Children Act* provide that in all actions concerning children, the best interest of the child shall be paramount. He cited the case of *In re Adoption of Baby SS (Minor) (Adoption Cause E018 of 2024) KEHC 10492 (KLR) (Family) (29 August 2024) (Judgment)*. He then prayed that once the adoption order is made, the child, GMN, be known as GMH as deponed in the Affidavits as this will enable the child to bear the surname of his adoptive father, the 2nd Applicant. He cited the case of *In re Adoption of NC (Child) [2022] KEHC 12210 (KLR)*. He also urged that based on the evidence of the witnesses as well as the documentary evidence presented, it is in the best interest of the child that the Applicants be allowed to jointly adopt the child as their own. In conclusion, he prayed that upon granting of the adoption order, this Court do make an order in line with Section 201 of the Act to the effect that the Registrar do make an entry in the Adopted Children Register.

Intervening Proceedings

16. As I commenced the drafting this Judgment, I noted that the Guardians ad Litem had not yet filed their Report as required under Section 188 of the Act, and that the Summons did not bear prayers for change of the child's name nor for appointment of the Legal Guardians. The Directorate of Children's Services Report on suitability of the proposed Legal Guardians had also not been filed. For the above reasons, I fixed the matter for Mention and on the appointed day, 4/02/2025, I gave the Applicant's Counsel time to attend to the said matters. This then resulted into deferring of the Judgment.



17. To his credit, Counsel worked round the clock and managed to cause the filing of the amended Originating Summons, the Guardians ad Litem’s Report and the Directorate of Children’s Services Report on the suitability of the proposed Guardians ad Litem.

Determination

18. The issue for determination is “whether the Applicants should be allowed to adopt the child the subject hereof”.

19. Regarding litigation concerning minors, Article 53(2) of *the Constitution* stipulates the over-arching principle which must apply whenever any decision concerning a child is to be made, to be the “best interests” of the child. It provides that:

“ A child’s best interests are of paramount importance in every matter concerning the child”

20. The said principle is echoed in Section 8(1) of the Children’s *Act, No. 29 of 2022*.

21. Regarding the law of adoption in Kenya, the relevant provisions are to be found in Part XIV of the Children’s Act, 2022 which provides as follows:

“ 183.

- (1) Subject to this Act, the High Court may, on an application made in the prescribed form, make an order, in this Act referred to as “adoption order”, authorising an applicant to adopt a child.
- (2) 2) All proceedings under this Part shall be heard and determined in chambers, and the identity of the child and the applicants shall be kept confidential.
- (3) In this Act, adoption means local, kinship and foreign adoption
- (4) For the purposes of this Part—
 - (a) “kinship adoption” has the meaning assigned to it in section 2;.....

184.

- (1) A person shall not commence any arrangements for the adoption of a child unless -
 - (a) the Council, in accordance with the rules, has declared the child free for adoption; and
 - (b) the child has attained the age of six weeks......

185.

- (1) Any child who is resident within Kenya may be adopted whether or not the child is a Kenyan citizen, or was born in Kenya.



- (2) Without prejudice to the generality of subsection (1), no Court may entertain an application for an adoption order in respect of a child unless—
 - (a) the child concerned has been in the continuous care and control of the applicant within Kenya for a period of three consecutive months preceding the filing of the application; and
 - (b) the application for an adoption order is supported by a report made by a duly registered adoption society recommending that an adoption order be made.
- (3) The report referred to in subsection (2)(b) shall contain the society’s findings and recommendations in respect of the child and the applicant or applicants, as the case may be.
- (4) The following children shall be eligible for adoption —
 - (a) a child who is an orphan and has no guardian or caregiver able and willing to take care of the child
 - (b) a child who has been abandoned or whose parents’ or guardian’s whereabouts cannot be traced within a period of one year;
 - (c) children who are willingly offered for adoption by their biological parents in accordance with regulations made under this Part.

186.

- (1) The Court may make an adoption order on application by—
 - (a) a sole applicant; or
 - (b) two spouses jointly.
- (2) The Court shall not make an adoption order in any case unless—
 - (a) the applicant has attained the age of twenty-five years, but is not above the age of sixty- five years; and
 - (b) the applicant, or both of the applicants in a joint application, is more than twenty-one years older than the child.
- (3) The restrictions in subsection (2) shall not apply in any case where a sole applicant or one of the joint applicants is the mother, father or relative of the child.

.....



- (8) Subject to the provisions of this section, an application for an adoption order in respect of a child shall be accompanied by written consents of the following persons
- (a) a parent or guardian of the child, or any person who is liable by virtue of any order or agreement to contribute to the maintenance of the child;
 - (b) on the application of one of the spouses, the consent of the other spouse; and
 - (c) in the case of a child who has attained the age of ten years, the child himself or herself
-”

22. Section 2 of the Act then defines "kinship adoption" as the adoption of a child by a person who is a relative of the child. Section 193(1) provides that a kinship adoption order may only be made in favour of a relative of the child. Section 2 also provides that for the purposes of adoption, a relative means:

“ a mother, father, brother or half brother, sister or half-sister, maternal or paternal uncle or aunt or grandparent or step-parent of a child”.

23. The 1st Applicant being the child’s biological mother, the Application herein is therefore for a “kinship adoption” and is permitted under the *Children Act*.

24. Regarding merits of the Application, I have read the Report dated 16/05/2024 submitted by the Directorate of Children’s Services and which gives the particulars and background information of the Applicants as the prospective adoptive parents. The Report states that interviews by the Children’s office were conducted with the Applicants, and also the child’s maternal grandmother, and observations made in respect to the Applicants’ own/other biological child and the child the subject hereof. The Report also states that the Children’ officers visited and inspected the Applicants’ home setting in Eldoret, whose environment they found to be child-friendly and conducive for the child’s mental, social and physical growth. The Report also returns a favorable assessment regarding the Applicants’ financial ability, confirms the arrangement as being one of “kinship adoption” and also confirms that the child has been declared free for adoption. In the end, the Report recommends that the adoption be allowed.

25. There is also on record the earlier Social Inquiry Report made by the same Directorate, and dated 21/06/2023. The Report indicates, inter alia, that the child was interviewed and confirmed that he has previously travelled out of the country on two occasions to meet the 2nd Applicant’s parents.

26. Also before Court is the Pre-Placement Report dated 6/12/2023 from Little Angels Network, the Adoption Society. The Certificate Serial No. 002426 dated 6/12/2023 issued by the Adoption Society declaring the child free for adoption is also attached thereto. The Report’s methodology is similar to the one from the Directorate of Children’s Services and also returns similar findings. In the end, it, too, recommends that the adoption be allowed.

27. I also have before me the Report dated 6/02/2024 filed by the Guardians ad Litem whereof they state that since their appointment, they have conducted several visits to observe the child’s well-being and development and have also conducted thorough assessments on the Applicants’ commitment and



capability to provide for the child. In the end, they also described the Applicants as suitable persons to adopt the child stated that it is in the best interest of the child that they so adopt him.

28. As aforesaid, this being a “kinship adoption”, the Guardians ad Litem are also the same persons proposed to be appointed as the Legal Guardians. Supplementing the proposal that the Guardians ad Litem be also appointed as the Legal Guardians, as aforesaid, the Directorate of Children’s Services also filed the Report dated 7/02/2025. The same gives the particulars and background information of the Guardians. It then states that the Guardians have cultivated a close relationship with the both the Applicants and the child, describes them as suitable to be so appointed, and in the end, also recommends them for the appointment.
29. Also on record and which I have also carefully perused are copies of the child’s Certificate of Birth, 1st Applicants’ National Identity Card, the Applicants’ respective Certificates of Birth, Applicants’ Passports, the 2nd Applicant’s Foreigner Certificate and Immigration Permit details, 2nd Applicants’ Bank statements and Pension documents meant to demonstrate financial ability, Certificate of Birth for the Applicants’ own child, the Guardians National Identity Cards, Medical examination results for the Applicants, and which have declared them to be medically fit, and also respective Clearance Certificates from the National Police Service indicating no previous criminal records on the part of the Applicants. There is also on record a copy of the Order of custody given on 22/06/2023 in Eldoret Magistrate’s Children’s Court Miscellaneous Application No. E031 of 2022. I have also perused the Affidavit sworn by the child’s paternal grandmother.
30. There is also on record a copy of the Applicants’ Certificate of Marriage (notarized) indicating that the marriage was conducted in India on 30/07/2021. Regarding the background of the marriage being conducted in India, the Children’s Officer’s Report dated 16/05/2024, gives the following narrative:

“The Applicants got to know each other online through one of Rxxxxxxx’s employers in Nairobi and Pxxxxxx was volunteering as a football coach in one of the schools in India. They dated for four months before they decided to physically meet. Rxxxx travelled to India in the year 2020 and while she was there the Kenyan government and many other countries restricted travelling from one country to another due to the Covid-19 pandemic and she was forced to stay in India for a while. The Applicants lived together as their relationship flourished and they legally got married on 30th July 2020 at the Registrar of Marriage in India

31. Regarding the biological father’s consent, the Applicants satisfied me that the biological father abandoned the 1st Applicant and relocated when the 1st Applicant fell pregnant and has never been in the picture. I am also satisfied that his whereabouts remain unknown to the Applicants. In respect to this situation, Section 186(8) and Section 187(1)(a) and (c) of the Children Act, provide as follows:

“186(8) Subject to the provisions of this section, an application for an adoption order in respect of a child shall be accompanied by written consents of the following persons—

- a. a parent or guardian of the child, or any person who is liable by virtue of any order or agreement to contribute to the maintenance of the child;
- b.
- c.



187. Power to dispense with consent

1. The Court may dispense with any consent required under section 186(8) paragraphs *para 31 subpara 1 subpara a (a)*, *para 31 subpara 1 subpara b (b)* and *para 31 subpara 1 subpara c (c)* if the Court is satisfied that—
 - a. in the case of the parent or guardian of the child, the parent or guardian has abandoned, neglected, persistently failed to maintain or persistently ill-treated the child;
 - b.
or
 - c. in any other case, except in respect of the consents required under section 186(8)(c) and (9), the person whose consent is required cannot be found or is incapable of giving his or her consent, or that his or her consent has been unreasonably withheld.
2. Without prejudice to the generality of subsection (1)(a)—
 - a. abandonment shall be presumed in any case where the child appears to have been abandoned at birth, or if the person or, where the institution having care and possession of the child, that institution has lost all contact with a parent or guardian of the child for a period exceeding one year; and
 - b. persistent failure to maintain the child may be presumed where, despite demands made, no parent or guardian has contributed to the maintenance of the child for a cumulative period of one year.”

32. In the circumstances, and in line with the provisions of Section 187 above, I waive and/or dispense with the requirement for the biological father’s consent by virtue of his reported abandonment of the 1st Applicant when she fell pregnant.

33. From the child’s Certificate of Birth on record, he was born on 30/01/2017. He is therefore 8 years of age. On the other hand, from their National Identity Cards, the 1st Applicant was born on 4/08/1992 while the 2nd Applicant was born on 24/3/1984. The 1st Applicant is therefore approaching 33 years in age while the 2nd Applicant is 41 years old. As already cited above, under Section 186(2)(b) of the Children’s Act, 2022, it is stipulated that the Court shall not make an adoption order “unless the Applicant has attained the age of 25 years, but is not above the age of 65 and the Applicant, or both of the Applicants in a joint application, are more than 21 years older than the child”. The Applicants therefore meet this age threshold.

34. In any case, even if they had had not met the age threshold, sub-section (3) of Section 186 which provides that “the restrictions in subsection (2) shall not apply in any case where a sole applicant or one of the joint applicants is the mother, father or relative of the child” would still give them a safe refuge.



35. Since as aforesaid, the child was born in the year 2017 and the Reports on record indicate that, she has been living with the Applicants since about 2021, the Applicants have definitely during this period extended parental care and protection to the child, and have safeguarded his welfare. The Applicants have, in my view, therefore demonstrated that they have the psychological and emotional capacity as well as the material resources to raise the child in a loving home environment.
36. After a careful assessment of the Reports and Affidavits filed herein, together with the witness testimonies, and noting that the minor has been in the custody and care of the Applicants for about 4 years now, with no negative report of any mistreatment or neglect throughout these years, this Court has formed the opinion that it would be in the best interest of the child to allow him to be adopted by the Applicants as joint adoptees.

Final Orders

37. In light of the foregoing, I allow the Amended Originating Summons dated 6/02/2025 in the following terms;
- i. An Adoption Order is hereby issued permitting and/or authorizing the Applicants, R.W.K and P.D.H , to adopt the child known as G.M.N . in terms of prayer (2) thereof.
 - ii. Pursuant to the above, it is ordered that the name of the child, G.M.N., be and is hereby now changed to G.M.H . in terms of prayer (5) of the Amended Originating Summons, so as to formally acquire or assume the 2nd Applicant's name as his surname.
 - iii. The Guardian ad Litem , J.M.M and M.N.K , are hereby discharged.
 - iv. The said J.M.M and M.N.K , (previously the Guardians ad Litem) of the P. O. Box 30500 Lodwar , are however now hereby appointed and/or re-appointed to be the joint Legal Guardians of the child G.M.N . (to be now known as G.M.H .), in terms of prayer (4) thereof.
 - v. The Registrar General is directed to enter this Order in the Adopted Children's Register and to issue a Certificate to that effect.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 21ST DAY OF FEBRUARY 2025

WANANDA J. ANURO

JUDGE

Delivered in the presence of:

Mr. Osewe Atieno for the Applicants

Court Assistant: Brian Kimathi

