



**In re Adoption of NMS (Adoption Cause E008 of 2024)  
[2025] KEHC 5127 (KLR) (17 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 5127 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MALINDI  
ADOPTION CAUSE E008 OF 2024  
M THANDE, J  
APRIL 17, 2025  
AND  
IN THE MATTER OF THE CHILDREN’S ACT  
AND  
IN THE MATTER OF NMS  
AND  
AN APPLICATION FOR ORDERS OF ADOPTION OF NMS  
BY  
BCS AND HIS WIFE LMS**

**IN THE MATTER OF**  
**BCS ..... 1<sup>ST</sup> APPLICANT**  
**LMS ..... 2<sup>ND</sup> APPLICANT**

**JUDGMENT**

1. By their Originating Summons dated 13.9.24, BCS and his wife LMS seek to adopt a child known as NMS. The child is the daughter of the male Applicant’s sister (now deceased).
2. The Applicants were taken through the adoption process and implications, by Kenya Children’s Home, a registered adoption society. Following their assessment, the society’s case committee sitting on 4.6.24 found the Applicants to have met the requirements for adopting the child and granted their approval. On 15.5.24, the society declared the child free for adoption *vide* certificate no. 978.
3. On 10.2.25, JM was appointed as the guardian ad litem for the child pending the hearing and determination of the adoption application, in accordance with Section 188 of the *Children Act*. The



guardian ad litem filed her report dated 4.3.25. Kenya Children's Home filed its report dated 4.6.24. All these reports are favourable and recommend the proposed adoption.

4. Winifred Kambua Kaluku, the Kilifi County Coordinator Children's Services filed a report dated 12.3.25 in which she recommended the adoption of the child by the male Applicant. She however had reservations regarding the female Applicant on account of the fact that she is not a Kenyan Citizen. She cited Section 186(6)(f) of the Act in this regard. The Court will address this issue later in this judgment.
5. Following the demise of the child's mother on 18.3.18, she has been in the custody of FCS, her maternal grandmother who indicated to the society her desire to have her son (the male Applicant) adopt the child. After being taken through the explanatory memorandum for guardians offering children for adoption, FCS, signed the certificate of acknowledgment dated 18.1.24. She also swore an affidavit on 9.4.24 consenting to the adoption of the child, pursuant to Section 186(8) (a) of the Act.
6. The child herein is 13 years old, having been born on 17.11.12. The child has agreed to the adoption. There is on record her written consent dated 17.1.24, in line with Section 186(8)(c) of the Act which provides:

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—

- (f) in the case of a child who has attained the age of ten years, the child himself or herself.

7. The power of this Court to make an adoption order is provided in Section 183(1) of the Act which provides:

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.

8. Section 183(3) provides as follows:

In this Act, adoption means local, kinship and foreign adoption.

9. A plain reading of Section 183(1) and (3) clearly shows that this Court has the power to make an adoption order in relation to local, kinship and foreign adoption.

10. Section 193(1) provides that a kinship adoption order may only be made in favour of a relative of the child. Section 2 of the Act defines "kinship adoption" as the adoption of a child by a person who is a relative of the child. The Section further 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. The male Applicant is a relative of the child being her maternal uncle. In light of this, the adoption herein is a kinship adoption.

11. I now turn back to the question whether the 2<sup>nd</sup> Applicant should be allowed to adopt the child, given that she is a foreign national.

12. Section 183(4)(c) defines a foreign adoption follows:

"foreign adoption" means an adoption in relation to which —

- i. the adopting parent or parents are Kenyan nationals with dual citizenship;



- ii. the adopting parent or parents are foreign nationals whether or not resident in Kenya;
  - iii. the adopting parent or parents are not Kenyan nationals but are biologically related to the child; or
  - iv. the adopting parent or parents were once Kenyan nationals but have lost their nationality by operation of the law of the host country to which the prospective parent or parents have a nationality.
13. A foreign adoption is one where the applicant or applicants are Kenyan nationals with dual citizenship or are foreign nationals whether or not resident in Kenya. An adoption is also foreign where the applicant or applicants are not Kenyan nationals but are biologically related to the child or were once Kenyan nationals but lost their nationality upon acquiring citizenship of another country.
14. While the male Applicant is dual citizen of both Kenya and Britain, he is a biological relative of the child. The female Applicant however, is a British citizen but not a relative of the child. Applying the definition in Section 183 of the Act, to the present circumstances therefore, it is clear that this is also a foreign adoption.
15. As indicated herein, under Section 183 of the Act, this Court has powers to make an adoption order in relation to foreign adoptions. In an apparent contradiction to this position, Section 186(6) provides:
- The Court shall not make an adoption order in favour of an applicant or joint applicants if the applicant or joint applicants, or any of them—
- (f) is a foreign applicant except where the applicant is a biological relative of the child.
16. On the one hand, Section 183(1) of the Act empowers the Court to, 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. Under Section 183(3), among the adoption orders that may be made is a foreign adoption relating to an applicant or applicants who are foreign nationals whether or not resident in Kenya. On the other hand, however, under Section 186(6)(f) an adoption order may not be made to a foreign applicant who is not a biological relative of the child.
17. What orders should then be made by the Court in light of this contradiction? Article 53(2) of the Constitution provides that a child's best interests are of paramount importance in every matter concerning the child. The best interests of the child must of necessity include the rights provided in Article 53(1). These are *inter alia* the right to parental care and protection, which includes equal responsibility of the mother and father to provide for the child.
18. Section 8 of the Act underpins this constitutional imperative of safeguarding the best interests of the child by providing that:
- 1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies—
    - a. the best interests of the child shall be the primary consideration;
    - b. the best interests of the child shall include, but shall not be limited to the considerations set out in the First Schedule.



2. All judicial and administrative institutions, and all persons acting in the name of such institutions, when exercising any powers conferred under this Act or any other written law, 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; and
  - c. secure for the child such guidance and correction as is necessary for the welfare of the child, and in the public interest.
3. In any matters affecting a child, the child shall be accorded an opportunity to express their opinion, and that opinion shall be taken into account in appropriate cases, having regard to the child’s age and degree of maturity.
19. In making a determination in this matter, this Court shall be guided by the overriding constitutional and statutory principle of safeguarding the bests interests of the child herein.
20. The reports on record indicate that the male Applicant has been supporting the child prior to her mother’s demise. Upon their marriage both Applicants have been jointly meeting the needs of the child. The Applicants now seek to adopt the child so that they can provide her with parental care and protection as the legal parents. The child was also given an opportunity to express her view on the adoption and informed the Court that she was happy to be adopted by the Applicants. The Applicants have demonstrated that they have the psychological and emotional capacity as well as the material resources to raise the child in a loving home environment. The child’s grandmother, FCS told the Court that she is willing to have the child adopted by her son and his wife.
21. The Applicants have nominated LMJ to be the legal guardian of the child, in the event of the Applicants dying or becoming incapacitated before the child is of full age. She signed a guardianship confirmation dated 29.1.24 which is on record.
22. After a careful assessment of the reports filed herein, this Court has formed the opinion that it would be in the best interest of the child to be adopted by the Applicants.
23. Having taken into account the foregoing factors, the Court makes the following Orders as prayed in the Originating Summons:
  - a. The Applicants BCS holder of Kenyan passport number AKXXXX71 and British passport number 12XXXX78 and his wife LMS holder of British passport No. 13XXXX354 are hereby allowed to adopt NMS
  - b. I direct the Registrar General to enter this order in the Adoption Register.
  - c. LMJ is hereby appointed the legal guardian of the child, in the event of the Applicants dying or becoming incapacitated before the child is of full age.
  - d. The appointment of JM, the guardian ad litem now stands expired.

**DATED, SIGNED AND DELIVERED IN MALINDI THIS 17<sup>TH</sup> DAY OF APRIL 2025**

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**M. THANDE**  
**JUDGE**

