



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re BEM (Adoption Cause E004 of 2024) [2025] KEHC 9426 (KLR) (9 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 9426 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MAKUENI  
ADOPTION CAUSE E004 OF 2024**

**TM MATHEKA, J**

**APRIL 9, 2025**

**JUDGMENT**

1. W.K.G a Kenyan/American, and B.U.G American , have been married since 17/3/2005.
2. They reside in Sadly Terrace, Gaithersburg MD in U.S.A.
3. Both have applied to adopt B.E.M, whose mother W.M.M is a niece of W..K.G because her father is a brother of W.K.G.
4. B.E.M is 15 years old.
5. The applicants have chosen Christopher Kiliu Kieti and Consolata Nduku Katiku as the legal guardians of BEM should they be allowed to adopt him. This couple appeared before me at the hearing of this cause and confirmed that they willingly accepted to be legal guardians and understood what it means to take over parental responsibility over the minor should the need arise.
6. BEM, the minor also appeared before me. I spoke with him - and he understood that the adoption order would remove parental responsibility from his mother to the applicants and he would move to live with them as his adoptive parents. He also confirmed that though he had not met his grand aunt as he referred to the 2nd applicant in person he had been in communication with her and her husband, after whom he is named, over the years since he became aware of himself.
7. His mother W.M.M - is named after the 2nd applicant who is the sister to her father. She gave her consent. It is was clear that the father of the minor had never been in the life of the minor and his whereabouts were unknown.
8. The parents of W.M.M, the grand parents of BEM - were present in court. They vouch for the 2nd applicant stating that as a sister, they trust her and her husband to take care of their grandson and give him the best in life. These family members confirm that the applicants have over the years given support to the family and more so to the minor and his mother.
9. I have also considered all the reports filed by the requisite authorities: by the county coordinator children services, Directorate of Children Service Makueni - where he observed as follows:



- a. Bonding: No physical interaction /bonding with the minor as taken place. However, the child has bonded with the applicants, through various virtual calls, have readily accepted him as one of their own and pay his school fees as well as those of his sisters. The biological mother or the minor was not coerced into agreeing or consenting to the adoption.
- b. Family support; this adoption enjoys the support of the applicants' respective families. The 2nd applicant's cousin, Mr. Christopher Kiliu Kieti and his wife Mrs. Consolata Nduku Katiku are the legal guardians to the child. All members of the applicants' immediate family have agreed and are supportive of the proposed kinship adoption. The applicants are going through their first adoption process.
- c. Financial Ability: The applicants have sufficient financial means to care for the child.
- d. Stable Marriage: The applicants enjoy a stable marriage of 20 years that has not been affected by their inability to have a biological child after they got married.

He made the following Recommendations

Your Ladyship, the applicants meet all the requirements for foreign adoption as per the [Children Act, 2022](#).

The applicants are financially and emotionally stable. The applicants have taken care of the minor's school fees and other financial needs, and have proved that they are able to take on parental responsibility and custody of the child on a more permanent basis if the adoption is approved by the court.

The Secretary of Children Services recommends the adoption of the minor by the applicants and that they be allowed to name the minor as BEM

10. I have also considered the report from Change Trust and the documents annexed thereto: -
  1. Child's birth certificate serial number 7615846 issued at Machakos registry showing the date of birth as 7th June 2009 and the parent as WMM birth in Machakos.
  2. Consent to Adoption by biological parent, being form of Social Inquiry signed by WMM on 21 August, 2024.
  3. Biological Mother's identification card number 279... WMM.
  4. Child's handwritten consent dated 21 August, 2024.
  5. Chief's letter Kalawani Location, Moony West Sub county showing that the family hails from the jurisdiction and confirming the circumstances . The letter is dated 20 May, 2024 acknowledging the family.
  6. Child's Medical Report dated 28 May, 2024 at the Tawa Sub-county Hospital.
  7. Letter of confirmation of Admission at I... School.
  8. Adopters' application and approval for adoption.
11. Change Trust recommended the applicants for adoption as adoptive parents.
12. Its Committee sitting on the 2 September, 2024, reviewed the child's dossier and was satisfied that the child is free for adoption and issued the Certificate to Declare a Child Free For Adoption with respect to BEM.



13. The applicants testified in court (virtually) & told the court that the decision to adopt BEM was made when he was a baby. That he was named after the 1st applicant. The 2nd applicant testified that she and her husband were ready to parent BEM, and continue to provide the support they had provided for him all along. That they have a home, and the resources to do so - and to care and love him as their own. They have provided evidence of their good standing both financially and socially.
- In addition they have other family within where they live and where the minor will interact with his and relatives who live in the USA. The example being the legal guardians who have children.
14. From what has been presented before me the only issue for determination is whether the applicant's O S dated 26th July 2024 is tenable. The applicable law is the *Children Act*, 2022
15. I note that the Children officer describes this adoption as both foreign and kinship, Can it be both?
16. S 183(4) (c) of the *Children Act*, 2022 describes a "foreign adoption" to mean 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; the adopting parent or
  - (iii) parents are not Kenyan nationals but are biologically related to the child
  - (iv); or 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
17. S. 186 (6) states
- 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—
- a. is of unsound mind within the meaning of the *Mental Health Act* (Cap. 248);
  - b. is incapable of exercising proper care and guardianship of a child;
  - c. has been convicted by a Court of competent jurisdiction for any of the offences specified in the Third Schedule or similar offences;
  - (d) in the case of joint applicants, if the applicants are not married to each other;
  - e. is a sole male applicant except where the applicant is a biological relative of the child; or
  - f. is a foreign applicant except where the applicant is a biological relative of the child.
18. This appears to resonate with what is defined as kinship adoption under s. 2 of the Act as the adoption of a child by a person who is a relative of the child
19. S. 193(1).states that
- A kinship adoption order may only be made in favour of a relative of the child
20. S. 2 of the Act defines a "relative" to mean
- a. in relation to a child, any person related to the child, whether of the full blood, half blood or by affinity and, where an adoption order has been made in respect of the child or any other



person under this Act, any person who would be a relative of the child within the meaning of this definition if the adopted person was the child of the adopter born inside marriage; and

- b. for the purpose of adoption, 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;
21. Both applicants hold American citizenship. The 2nd applicant's certificate of naturalization was issued on 13th March 2024. Legally that places them in the category of foreigners: adoptive parents who are not Kenyan nationals but are biologically related to the child
22. The 2nd applicant is a sister to the grandfather of BEM. That makes her a grandmother to the child as well. The letter from the chief further confirms this position,
23. Hence these applicants fall within the exceptions to the limitations against foreign adoptions because the 2nd applicant is biologically related to the child bringing this foreign adoption into the domain of the kinship adoption.
24. The Adoptive parents have complied with all the other legal requirements and come highly recommended by the family as suitable parents.
25. In the circumstances their Originating Summons dated 26/7/2025 be and is hereby allowed in the following terms:
  - a. The applicants B.U.G and W.K.G be and are hereby authorized to jointly adopt the minor B.EM.
  - b. Christopher Kiliu Kieti and Consolata Nduku Katiku be and are hereby appointed as the legal guardians of BEM
  - c. The Registrar General be and is hereby directed to make in the Adoption Children Register an entry recording the Adoption in accordance with the particulars set out in the schedule annexed hereto containing the full particulars of the minor and the adoptive parents.
  - d. The guardian ad litem be and is hereby discharged.
27. There is no orders as to costs.

**DATED, SIGNED AND DELIVERED VIA CTS WITH CONSENT OF COUNSEL THIS 9TH APRIL 2025**

**MUMBUA T MATHEKA**

**JUDGE**

Court Assistant: Chrispol

**SIGNED BY: LADY JUSTICE MATHEKA, TERESIA MUMBUA**

**THE JUDICIARY OF KENYA.**

**MAKUENI HIGH COURT**

**HIGH COURT DIV**

**DATE: 2025-04-09 19:20:31**

