



REPUBLIC OF KENYA



KENYA LAW
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**In re JK (Baby) (Adoption Cause E002 of 2025)
[2025] KEHC 6038 (KLR) (15 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6038 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
ADOPTION CAUSE E002 OF 2025
RN NYAKUNDI, J
MAY 15, 2025
N THE MATTER OF CHILDREN ACT, 2022
IN THE MATTER ADOPTION OF BABY (JK)**

IN THE MATTER OF

LNG APPLICANT

JUDGMENT

1. Before this Court is the undated Originating Summons filed on 18/02/2025, Statement in Support of the Application for an Adoption Order and Affidavit in Support of the Application, seeking the following orders:
 1. That the Applicant be authorized to adopt the child JK.
 2. That upon the making of the adoption orders the said child be known as JJN.
 3. That the Registrar General do make the appropriate entry of JJN in the Adopted Children's Register.
 4. That the child JJN be presumed to be a Kenyan citizen born in Kenya and that the Director of Immigration series do issue JJN with a Kenyan Passport.
 5. That FMG be appointed Legal Guardian of the child JJN
2. In the Statement in support of the Application for Adoption order, the Applicant stated that she is 54 years old, single and had never been married. She added that she is a business lady and she resides in Kapchumba area in Eldoret, Uasin Gishu County, she is a Christian and has no biological children. She further stated that she is of sound mind and she has never been charged or convicted by a Court of competent jurisdiction of any of the offences set out in the Third Schedule of this Act, that no one has agreed to give her payment or a reward as consideration of her adoption, that she is not related to the child and that she is in good health. The Applicant added that the child was received into her care and



possession on 30/10/2023 and has been continuously in her care and possession since that date. The Applicant herein also appointed her brother FMG who is the Applicants brother as the legal guardian of the child in the event of her absence.

3. The child in this matter, baby JK aka AJ was born on 17/10/2022 at Kakamega County Referral Hospital to PI, the child's mother is visually impaired and she was raped by unknown person in February, 2022. The child's mother and grandfather visited the Kakamega East Sub-County Children Office with the intention of offering the child for adoption. The child was then rescued and placed at Rehema Pefa Children's Home, a Child Welfare Society of Kenya partnering organization on 25/11/2022. She was later committed to the same institution vide P & C Case No. E14 of 2023 by the Kakamega Children's Court.
4. The child remained under the care and custody of PEFA Rehema Children' Home until 30/10.2023 when she was placed with the Applicant on foster care basis pending adoption. Subsequent assessments conducted after placement shows that the child has settled in her new home and family.
5. I have had the opportunity to read the Report dated 9/05/2025 supplied by the Directorate of Children's Services and the Report gives the particulars of the Applicant as the prospective adoptive parent and also particulars of the biological mother. The Report states that interviews with the Children's office were conducted with the Applicant, the biological mother and the grandfather. The Report also stated that the relevant officers visited and inspected the Applicants' home setting in Mountain View Estate, located in Kapymemit Location within Turbo Sub-County before approving the adoption of the minor. The Reports also give background information about the Applicant and also give further information and relevant particulars concerning the entire prospective adoption herein. In the end, the Report recommends that the Application for adoption be allowed. On 25/11/2022, the minor's biological mother with the help of the child's grandmother, willingly signed the mother offer forms and the Certificate of Acknowledgment with the intention to offer the child for adoption.
6. The child was declared free for adoption by the Child Welfare Society of Kenya, vide the annexed Certificate serial number XXXX. I am, therefore, satisfied that this legal pre-requisite for an adoption has been met.

Determination.

7. Article 53(2) of the Constitution, provides the over-arching principle which must apply whenever any decision concerning a child is to be considered. It provides that:

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

8. The aforementioned provision is also echoed under Section 8 (1) of the Children's Act, No. 29 of 2022.
9. Further, Part XIV of the Children's Act, 2022 provides for the relevant provisions of the law on adoption in Kenya.

10.

183.

- (1) Subject to this Act, the High Court may, on a n 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) 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;
 - (b) “local adoption” means an adoption in relation to which—
 - (i) the child is resident in Kenya; and
 - (ii) the adopting parent or parents are Kenyan nationals resident in Kenya; and
 - (c) “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 Power to make adoption orders. m e a n s an adoption in

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.
- (2) A person, including a parent, guardian or adoption society, shall not, prior to the making of an adoption order, entrust a child to the care, possession or control of any person not qualified to adopt a child in accordance with this A c t .
- (3) An applicant shall not preselect a prospective adoptive child except—
 - (a) in the case of kinship adoption;
 - (b) Where the applicant is a foster parent seeking to adopt a fostered child under the applicant’s care.
- (4) The Secretary shall monitor and submit reports to the courts on the wellbeing of a child who is subject to adoption proceedings.



- (5) Any person who contravenes subsections (1) or (2) of this section commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding three years or to a fine not exceeding one million shillings, or to both.

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; No . 29 Who may apply to adopt a child. 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.
- (4) The Court shall not make an adoption order in favour of a sole male applicant, unless the applicant is a blood relative of the child .



- (5) The Court shall not make an adoption order in favour of the following persons unless the Court is satisfied on reasons to be stated on record that there are special circumstances that warrant the making of the adoption order an applicant or joint applicant who has, or both have, attained the age of sixty-five years.
- (6) 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;
 - (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.
- (7) Notwithstanding anything contained in this section the Court may at its sole discretion decline to make an adoption order in favour of any person or persons if the Court is of the view that it is not in the best interest of the child to make the order
- (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
- (9) If the child referred to in subsection (8)(c) has a disability which restricts or impairs the child's ability to independently give his or her consent, the child shall be accorded such assistance, including the assistance of an intermediary, to facilitate his or her written consent.

11. In light of the best interests of the child principle provided for under Article 53 (2) of the [Constitution](#) of Kenya, 2010, Sections 8 (1), (2), and (3) of the [Children's Act](#) No. 29 of 2022, and the 1st Schedule of the [Children's Act](#) No. 29 of 2022, this Court has formed the opinion that it would be in the best interest of the child to be adopted by the Applicant. The Court is further satisfied that all the legal requirements for local adoption have been met.



Final orders.

12. In the end this Court makes the following Orders:

- i. The Applicant LNG be and is hereby allowed to adopt JK (minor).
- ii. Upon adoption, the child shall be renamed as JJN.
- iii. The child is declared to be a Kenyan citizen by birth, entitled to all the rights and privileges under the Constitution of Kenya and all other applicable laws.
- iv. FMG is hereby appointed as the legal guardian in the event that the Applicant dies, or is incapacitated by ill health.
- v. The guardian ad litem is accordingly discharged.
- vi. The Registrar General is directed to enter this Order in the Adopted Children's Register.

13. It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 15TH DAY OF MAY 2025

R. NYAKUNDI

JUDGE

