



REPUBLIC OF KENYA



KENYA LAW
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**In re JH (Minor) (Adoption Cause E003 of 2023)
[2025] KEHC 6314 (KLR) (12 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6314 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
ADOPTION CAUSE E003 OF 2023**

PN GICHOHI, J

MAY 12, 2025

IN THE MATTER OF AN APPLICATION FOR ADOPTION OF JH(MINOR)

IN THE MATTER OF

FNN 1ST APPLICANT

KMN 2ND APPLICANT

JUDGMENT

1. The Applicants herein moved this by Originating summons dated 13th February, 2023 and Amended on 30th April, 2025. It is expressed under Articles 14(4) and 53(2) of the Constitution, Sections 4, 154, 156(1), 157,158,159,162,163, 170 of the Children’s Act and Legal Notice No. 75 of 2002, seeking for the following Orders: -
 1. The consents of the biological parents of the minor herein be dispensed with since the child was found abandoned and efforts to trace the parents have since proved futile.
 2. The Applicants herein be authorized to adopt the said child and the child be henceforth called CJN .
 3. The Child be presumed to be a Kenya citizen having been found in Kenya at the time of birth.
 4. The Registrar-General do make the appropriate entries in the adopted Children register in respect of the minor and further the Registrar of Births and Deaths does issue a Birth Certificate in that respect thereof.
 5. The Guardian ad litem SR be discharged and PMN of I.D No. 1050xxxxx be appointed as legal guardian of the minor herein in the event that the applicants



herein are in any way incapacitated or in any way unable to discharge their parental obligations.

6. The Court does issue such other Orders as may be necessary in the best interest of the child.
2. This application is based on the ground on the face of the Summons and the Supporting Affidavit sworn by the Applicants on 13th February 2023 where they state that they are ready and willing to assume full responsibility of the Minor who they have raised since when he was one year and six months old and he is now turning six (6) years.
3. The Applicants depone that the Minor born on 4th July, 2016 was found abandoned by the biological mother on 17th April, 2017 and admitted at New Life Home on 19th May, 2017. He was committed on 19th May, 2017 at the Chief Magistrate's Court at Eldoret under P&C No. 68 of 2017.
4. On 26th March, 2018, they took the Minor into their foster care from the Change Trust and since then, he has been in their continuous care and control to date and he has been declared free for adoption by Kenyans to Kenyans Peace Initiative (KKPI) Adoption Society.
5. The Applicants explain that they have been married for the last 18 years but they have not been blessed with a child of their own due to their medical condition hence the need to adopt this male child who is a Kenyan by Birth and of African descent.
6. They state that are both Kenyans of African origin born in 1969 and 1971 respectively and that they are both Kenyan Citizens. They confirm that the child has not received or agreed to received and no person has made or given or agreed to make payments as reward in consideration for the adoption of the child herein.
7. Pursuant to an Order of this Court issued on 12th March 2025, the Report dated 25th April, 2025 was filed by the County Children's Co-Ordinator Mr. Pilot Khaemba, recommending the Applicants to adopt the subject child.
8. At the hearing of this matter, five witness testified in support of this application. Jackline Wambui Mwangi of KKPI Adoption Society confirmed its recommendation of the Applicants to adopt the child.
9. Fredrick Njuguna adopted the documents filed in support of the Originating Summons and urged this Court to allow the Application for Adoption stating that he married the 2nd Applicant in the year 2004 but they have not been blessed with any biological children. He also stated that SR , the Guardian ad litem, is his friend, while the proposed Legal Guardian herein, PMN , is his sister.
10. KMN informed this Court that they have lived with the minor for about 7 years now and prayed for the Adoption order to issue.
11. SR , informed this Court that he has known Fredrick Njuguna for over 30 years as they grew up together and went to the same school. That he has known KMN for about 20 years and that both are suitable parents to adopt the subject child. He also stated that he has interacted with them and noted that they take good care of the child.
12. PMN told the Court that she the sister to FN. She prayed to be appointed Legal Guardian of the minor. She confirmed to this Court that she understands her role as guardian to the child and that she is willing and able to step in and take parental responsibility over the minor in the event that the Applicants herein are unable to.



Determination

13. This Court has considered this application together with the supporting affidavit, the reports filed as well as all the evidence adduced in support thereto. The prerequisites for adoption are set out in section 184 (1) of the *Children's Act* 2022 which provides –
 - “ 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.
 - b. the child has attained the age of six weeks.”
14. Kenyans to Kenyans Peace Initiative (KKPI) Adoption Society, a registered adoption agency have annexed to their report a certificate declaring the child herein free for adoption. The subject child was born on 4th July, 2016 in Eldoret town, within Uasin Gishu County and is now about 9 years of age.
15. Regarding the suitability of the Applicants, Section 186 (2) of the *Children's Act* 2022 provides that: -
 - “ 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.”
16. Both Applicants are Kenyan citizens as proved by the annexed copies of the national Identity Cards. The age of the Minor and the Applicants fit the age bracket stipulated under the *Children's Act*.
17. The Applicants are in a monogamous marriage which was solemnized on 28th August, 2004 at PCEA Church in XXXXXXXX, within Nakuru County as evidenced by a copy of their Marriage Certificate Serial Number 45XXXXXX.
18. They have informed this Court that they have not been blessed with any biological children for the period of the union and are thus desirous of adopting this child and providing for him and indeed, the child has been in their foster care for more than Seven (7) years within which period they have bonded well.
19. This Court has had the opportunity to see the child during hearing of this matter and noted that indeed, the three have bonded very well.
20. As per the record and testimony of the witnesses herein, the Applicants have been good foster parents to the Minor thus fit to be allowed to adopt him.
21. Further, both Applicants are in gainful farming, which is sufficient to take care of the child's needs. This was elaborated by the report drawn by Change Trusts dated 15th December, 2017, that stated that the Applicants earn Kshs. 40,000 from Milk per month, Kshs. 60,000 per month from sale of fodder and Kshs. 500,000 from sale of Maize and wheat, twice a year. In addition, that they own 30 acres of farmland separate from the main farm and also have a car.
22. As per the Report filed in this Court, a home visit conducted by Change Trust shows that the Applicants live in a family home in XXXX area, in the vicinity of XXXXXXXX market, Nakuru County. The house is a three-bedroomed stone walled bungalow sitting on a XXX acres' farm.



23. The house is connected to grid electricity and the water is from a natural spring farm taken through a filter system. Further, the house is well furnished with suitable furniture and the compound was reported to be clean and well arranged.
24. The Applicants are Christians worshipping mainly at PCEA Church situated in XXXXXXXXX and intend to raise the child in the Christian faith. In support of this fact, they annexed reference by Reverend James Njuguna Kuria to Change Trust Report.
25. As regard to their conduct, the Applicants annexed copies of police clearance certificates issued on 13/9/2016 and 16/1/2017 respectively to prove that they have no criminal record.
26. With respect to their health, the Applicants are both physically and emotionally fit and healthy to parent, love and care for the child. This evidenced by copies of their Medical Reports by Dr. Ann Kiburu dated 31st January, 2017 and attached to the application.
27. The Applicants have also sought to Appoint the 1st Applicant's sister, Ms. PMN, as the Legal Guardian to the child and she consented to the appointment.
28. Based on the above evidence, this Court is satisfied that the Applicants are suitable adoptive parents.
29. Regarding the prayer to declare the child a citizen of Kenya, Article 14 (4) of the Constitution provides that: -
 - “(4) A child found in Kenya who is, or appears to be less than eight years of age and whose nationality and parents are not known, is presumed to be a citizen by birth.”
30. The subject child is believed to have been born on 4th July, 2017 and found abandoned at the veranda of Stage View Guest House. He was aged about 9 months. He was rescued by a good Samaritan and the abandonment was reported at Eldoret Police Station *vide* OB Number 65/04/04/2017. The child was taken to Moi Teaching and Referral Hospital for medical attention.
31. On 19th May, 2017, the child was committed through the Chief Magistrates Court in Eldoret *vide* Care and Protection Number 68 of 2017, to the legal custody of New Life Children's Home for a period of 3 years.
32. Thereafter by a Foster Care Agreement dated 26th March, 2018 the child was released into the custody of the Applicants, who have continuously taken parental responsibility over the child to date. In the circumstances, the Child is presumed to have been born in Kenya and therefore a Kenyan citizen by birth.
33. On the prayer to dispense with consent of the child's biological parents, the material before this Court shows that efforts by the police to trace the biological mother of the child have not born any fruits. Further, no person has ever come forward to claim the child. In the circumstances, the right to consent is waived by virtue of Section 187(1) of the Children Act.
34. From the totality of evidence on record, this Court is satisfied the Originating Summons is merited and Orders issued in the following Orders: -
 1. FNN and KMN are hereby authorized to adopt JH (the minor).
 2. Upon adoption the minor shall henceforth be called CJN .



3. The child is declared to be a Kenyan citizen by birth and is entitled to all the rights and benefits pursuant thereto.
4. The Registrar General is hereby directed to make the appropriate entry of CJN in the Adopted Children's Register.
5. The Registrar of Births and Deaths is hereby directed to issue the Applicants with a birth certificate reflecting the child identity together with all relevant documents in respect to the child, CJN .
6. PMN of Identity Card No. 1050XXXX is hereby appointed the Legal Guardian of CJN .
7. SR is discharged from the duties of Guardian Ad Litem.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 12TH DAY OF MAY, 2025

PATRICIA GICHOHI

JUDGE

In the presence of:

Ms Nyambuto holding brief for Mrs. Gathecha for Applicants

Ruto, Court Assistant

