



In re N (Baby) (Adoption Cause E011 of 2024) [2025] KEHC 5606 (KLR) (6 May 2025) (Ruling)

Neutral citation: [2025] KEHC 5606 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
ADOPTION CAUSE E011 OF 2024
RN NYAKUNDI, J
MAY 6, 2025
IN THE MATTER OF THE CHILDREN’S ACT
AND
IN THE MATTER OF ADOPTION OF BABY N BY
SJB
(SOLE FEMALE APPLICANT)**

IN THE MATTER OF

SJB APPLICANT

RULING

1. The Applicant herein SJB filed Originating Summons dated 23rd December, 2024 seeking the following orders:
 - a. That the applicant be authorized to adopt the child baby N.
 - b. That the consent of the biological parents be dispensed with as the child was abandoned.
 - c. That upon the making of the adoption orders the said child be known as BKJB.
 - d. That the Registrar General do make the appropriate entry of BKJB in the adopted children’s register.
 - e. That the child BKJB be presumed to be a Kenyan citizen born in Kenya and that the Director of Immigration Services do issue BKJB with a Kenyan passport.
2. The summons is supported by an affidavit sworn by the applicant who deposed as that she is 44 years old, single and never married. She stated that she is a farmer at Mosorto village, Uasin Gishu County and that she does not have a biological child. That she is not related to the child and she is in good health. Further that she received the child into her care and possession on 13th March, 2024 and has been continuously in her care and possession since the said date.



3. MKN who assumed responsibility as a guardian Ad Litem. He deposed that the applicant is well known to him having lived with her in the neighborhood for 40 years. He stated that the applicant has the means to enable her maintain and bring up the minor including the provisions of proper social and basic human needs. He added that he is also able to take care of the child and take reasonable steps to safeguard the interests of the minor as the Guardian Ad Litem.
4. In any adoption proceedings, the director of children bears greater responsibilities in providing an independent and objective report as to the suitability of the adoptive parents seeking leave of the court to adopt the proposed minor. In summary, the director of children services in a report dated 22nd April, 2025 stated as follows:
5. That the applicant has never gotten married due to her health issues. As to the home environment, the report indicated that the applicant and the child live at her parent's home, the house is a 3 bedroom with a sitting room which is well furnished. The applicant live in one of the rooms, the bedroom has a double check bed and a baby coat for the child, that the child has enough clothes which is well arranged in her suit cases. The house is connected with electricity. That the compound is secured with a barbed wire with 2 gates. That the security within the village is good and the applicant's home is near a small shopping center.
6. Regarding the financial ability of the child, the report indicated that the home visit to the applicant's place of residence, it was evident that she was a person of means. She hatches and sells chicks and does horticultural farming where she cultivates potatoes and carrots, she also makes calabashes for sell that a single calabash goes for between 800-1000/= . She also makes her mats; owns 4 sheep, 3 cows and a quarter plot. That the applicant's monthly income is approximately 20,000/= which is enough to cater for the child.
7. On their observations, the child in this matter has been declared free for adoption by Child Welfare society of Kenya. A social inquiry conducted by the children's officer at the applicant's residence in Chepkitiny-flax indicated that the adoptive child has bonded well with the prospective parent and looked happy, playful and social; she has also recognized the applicant as her mother and refers to her as 'mum'. The applicant's family is in total support of the process, and one of her brother-in-law is the guardian ad litem. It was also observed that the applicant has demonstrated that she has the financial capability to raise the child having supplied the children officer with all her financial documents and the observations made during a home visit confirms the same.
8. The report recommended that the final orders be granted in favor of the proposed local adoption of BABY N to the prospective adoptive parent SJB, a single applicant. In essence, the children's officer found the applicant to be a good candidate as an adoptive parent of the minor, having also been clear by the Child Welfare Society of Kenya as declaring the child free for adoption.

Determination

9. The gist of this application is on whether in this in the best interests of the child to be adopted by the applicant within the ambit of Kinship adoption. The best interests of the child as a concept has been ring-fenced in the Children's Act, prior to the constitutional dispensation. In the new dawn, the drafters of the new constitution place a premium on the rights of the child in Art 53 as a whole and for our purposes sub-section 2 reads as follow:

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



10. The *Constitution* establishes two clear obligations for courts: to consider children's interests in all relevant cases and to assign appropriate weight to these interests, which the law recognizes as being of paramount importance. This judicial duty extends beyond the explicit protections outlined in Article 53(1) and (2) of the *Constitution*. While jurisprudence continues to evolve, courts must consistently strengthen the recognition of children's best interests in their decisions. In the present case, Section 193 of the Children's Act provides guidelines for alternative family care in Kenya. Considering both the best interest principle and children's rights, kinship adoption decisions depend on the specific circumstances outlined in Section 186 of the Children's Act, 2022 which provides:

“The court may make an adoption order on application by-

- (1) A sole applicant; or
Two spouses jointly.
- (2) The court shall not make an adoption order in any case unless:-
The applicant has attained the age of twenty-five years, but is not above the age of sixty-five years; and
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”

11. The *Constitution* demands the paramountcy of Children's best interest in matters affecting them. This principle is restated under Section 8 of the Children's Act which provides as follows:

“In all actions concerning children whether undertaken

1. By public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies
The best interest of the child shall be the primary consideration;
The best interest of the child shall include, but shall not be limited to the considerations set out in the first schedule.”

12. It is now sufficiently clear that the in-depth of the Children's Act, holistically as a matter of principle and policy any decision by a court of law, tribunal or administrative agency has to lend itself to factor in the welfare and the best interests of the child. The categories of questions that merit the court's jurisdiction, constitute the following list of factors

- a. The nature of the personal relationship between: -
 - i. The child and the parents, or any specific parent; and
 - ii. The child and any other care giver or person relevant in those circumstances;
- b. The attitude to the parents, or any specific parents, towards –
 - i. The child; and
 - ii. The exercise of parental responsibilities and rights in respect of the child



- c. The capacity of the parents, or any specific parent, or of any other care-giver or person, to provide for the needs of the child, including emotional and intellectual needs;
 - d. The likely effect on the child of any change in the child's circumstances, including the likely effect on the child or any separation from: -
 - i. Both or either of the parents; or
 - ii. Any brother or sister or other child, or any care-giver or person, with whom the child has been living;
 - e. The practical difficulties and expense of a child having contact with the parents, or any specific parent, and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and direct contact with the parents, or any specific parent, on a regular basis;
 - f. The need of the child: -
 - i. To remain in the care of his or her parent, family and extended family; and
 - ii. To maintain a connection with his or her family, extended family, culture or tradition;
 - g. The child's
 - i. Age, maturity and stage of development;
 - ii. Gender;
 - iii. Background; and
 - iv. Any other relevant characteristic of the child;
 - h. The child's physical and emotional security and his or her intellectual, emotional, social and cultural development;
 - i. Any disability that a child may have;
 - j. Any chronic illness from which a child may suffer;
 - k. The need for a child to be brought up within a stable family environment and, where this is not possible, in an environment resembling as closely as possible a caring family environment;
 - l. The need to protect the child from any physical or psychological harm that may be caused by:-
 - i. Subjecting the child to maltreatment, abuse, neglect, exploitation or degradation or exposing the child to violence or exploitation or other harmful behavior; or
 - ii. Exposing the child to maltreatment, abuse, degradation, ill-treatment, violence or harmful behavior towards another person;
 - m. Any family violence involving the child or a family member of the child; and
 - n. Which action or decision would avoid or minimize further legal or administrative proceedings in relation to the child.
13. In essence, the welfare and the best interests of a child centered approach both as a Constitutional imperative and statutory acknowledgement is aimed at protecting the needs and entitlements of children born within our borders.



14. In *B v M* (2006) BCLR at 138 1066E & F the court recognized that the best interests standard is not an inflexible rule, it has to be construed and given diverse interpretation dependent on different settings. No one factor can be given pre-eminence in all cases involving children. The complexity of the best interests principle require the court to consider all factors which contribute to ascertain children's best interests. It is necessary to avoid a unidimensional focus which fails to suggest a careful balancing of the different ingredients which may all point towards and comprise the children's best interests. At the heart of the court's jurisdiction and decision making as to what is in the best interests of a particular child, it is involved in interpreting and applying that concept within chapter 4 of the Constitution in the bill of rights. It is consequently also necessary for courts to have regard to the dictates of Art 2(5) and (6) of the Constitution in coming to their determination and of particular importance in this context is the requirement to incorporate international law when interpreting the bill of rights. For instance, the United Nation Convention of the rights of the child in Art 21 states as follows:

“State parties which recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

Ensure that the adoption of a child authorized only by competent authorities who determine, in accordance with the applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary.”

15. The Convention on the Rights of the child further stipulates that when considering placement options due regard shall be paid to the desirability of continuing in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background. Similarly, the Preamble of the Hague Convention records the recognition of the state parties that: -

The child, for the full and harmonious development of his or her personality should grow up in a family environment, in an atmosphere of happiness, love and understanding.

16. I have carefully analyzed the adoption application, the affidavit evidence in support, the children's social inquiry report and the report by the Child Welfare society and that of the Directorate of Children Services in line with the best interests of the child, the solution lies in granting the application dated 23rd December, 2024. Bearing in mind the above principles, the following orders shall abide:

- a. That the Applicant SJB is hereby authorized to adopt “BN” a minor and the child shall be called “BKJB”.
- b. That the Registrar General is hereby directed to make an entry of the adoption order herein in the adopted children's register in the prescribed form.
- c. That the Registrar of births do issue BKJB with a new birth certificate of the minor, delete the biological mother and father name on the birth certificate and insert the applicant's name as a biological parent of the minor.
- d. That the guardian ad litem be and is hereby appointed within the provisions of the Children's Act.
- e. The costs of this application be in the cause

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 6TH MAY 2025

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R. NYAKUNDI
JUDGE

