



**In re STKS (Minor) (Adoption Cause E252 of 2024)
[2025] KEHC 8768 (KLR) (Family) (20 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8768 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E252 OF 2024
PM NYAUNDI, J
JUNE 20, 2025**

IN THE MATTER OF

**JS 1ST APPLICANT
NM 2ND APPLICANT**

JUDGMENT

1. Vide Exparte Originating Summons, dated 19th November, 2024 the Applicant seeks the following orders, That:-
 - i. The child be presumed to be a Kenyan Citizen by birth.
 - ii. The Director of Immigration be authorized to issue the child with Kenyan Passport.
 - iii. A declaration of paternity with respect to the 1st Applicant be made as the biological father of STKS (Minor).
 - iv. Applicants JS and NM be authorized to adopt the child to be known as AIIS (minor).
 - v. VFN be appointed as the legal guardian of the child in the event of death or incapacity of the Applicant before the child is of full age and fully self-reliant.
 - vi. The Registrar General do make an entry of this adoption in the adopted children Register.
 - vii. New birth certificate be issued for STKS (minor) indicating JS and NM as father and mother of the minor respectively.
 - viii. The Court be pleased to make any further orders
2. The 1st Applicant is a German Citizen while 2nd Applicant is a Tanzania Citizen. They live and work in Kenya. They are in gainful employment. The 1st Applicant owns an e-commerce business in Kenya



- while 2nd Applicant is an employee at the World Bank. They do not have children of their own. Consequently, the Applicants agreed to expand their family through surrogacy with the Gestational Surrogate by the name LAA (Surrogate mother).
3. Baby STKS (child herein) is 1-year-old, presumed to be born on 2nd April, 2024 at Aga Khan Hospital, Nairobi to JS and NM through surrogacy. The child is a twin to Baby AIIS in Adoption E 231 of 2024.
 4. The surrogate was safely delivered of the child in this matter and the Applicants took the child and her twin into their custody immediately after their birth. After signing a consent, the surrogate handed over the child relinquishing her legal custody of the child to the Applicants. Subsequently, a DNA report dated 28th May 2024, shows the test was done by Kenya Medical Research Institute (KEMRI) that confirmed the relationship of the child with the Applicants and delinked her relationship from the gestational surrogate.
 5. Thereafter, the Children’s Court in Miscellaneous Civil Children Case Number E 149 of 2024 gave an order allowing the transfer of parental rights and responsibilities from the Gestational Surrogate and granting the Applicants legal guardianship over the minor.
 6. Additional, KKPI Adoption Service assessed the application and was satisfied that the Applicants were suitable adoptive parent and further that the adoption would be in the child’s best interest therefore declared the child free for adoption vide Freeing Certificate Serial Number XXXX.
 7. All the Statutory Reports that have been filed in respect of the proposed adoption of the child by the Applicants have recommended that this Court allows the Applicants to adopt the child. This being a local adoption where the child is being adopted by the Applicant, it will be the best interest of the child.
 8. The Children Officer, Damaris Kobonah, submitted a favourable report dated 11th December, 2024. She stated that the Applicants bonded well with the child since day one when she was born. The Applicants are financially stable, medically and physically fit to take good care of the child. The Applicants are clear of any criminal claim as evidenced by Certificate of Good Conducts. The Officer further affirmed that the Applicants have met the legal requirements for Kinship adoption as stipulated by the *Children Act* 2022 thus recommended the adoption process.
 9. LMK, (Guardian Ad litem) also submitted a positive report dated 14th April 2025, stated that the minor has bonded well with the Applicants and their extended family. The surrogate mother relinquished her parental rights and responsibilities over the child hence recommended the adoption since it is the best interest of the child.
 10. VFN and TD (Legal Guardians) they were in Court and testified that the 2nd Applicant is daughter to VFN and sister to TD. They have consented to be Legal Guardians in the event the Applicants are unable to discharge their responsibilities as they will assume full parental responsibility according to adoption orders.
 11. The Court also interviewed LAA (the surrogate mother) where she stated that she is aware of adoption proceedings and voluntarily consented to the same.

Determination

12. In the absence of specific laws in regards to surrogacy in Legal System, Kenya Courts have relied on the principle of the child’s best interests to guide decisions in surrogacy cases where the child’s well-being is paramount”



13. In *In re Baby QVW (Subject) (Adoption Cause E005 of 2024) [2024] KEHC 4763 (KLR) (Family) (25 April 2024) (Judgment)*, a case that was similar to the present case, Hon Justice Chemitei observed as follows;

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 an obligation to prioritize the child’s best interests in making decisions touching on her.

14. After carefully assessing the records herein, I am satisfied that the Applicants have fulfilled all the legal requirements relating to the Child’s adoption. Section 186 of the *Children Act*, 2022 provides. The Court may make an adoption order on application by-

(1)

(a) Sole applicant; or

(b) Two spouses jointly.

(2) The court shall not make an adoption order in any case unless-

i. the applicant has attained the age of twenty-five years, but is not above the age of sixty-five years; and

ii. 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.

(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—

(f) is a foreign applicant except where the applicant is a biological relative of the child.

15. This Court is alive to the jurisdiction of the High Court vide Article 165 Constitution of Kenya 2010 and Section 183(1) *Children Act* 2022. The Court is conscious of the law; Article 53 Constitution of Kenya 2010, Section 8 of *Children Act* 2022 and the UN Convention on the Rights of the Child & African Charter on the Rights & Welfare of the Child all amplify on the best interests of the child.

16. The Court has evaluated the facts of this Kinship Adoption from the Reports filed. It is evident that the Applicants have fulfilled all the legal requirements of a Kinship Adoption as required under Section 193 of the Children’s Act, 2022. The guiding principle remains in the best interests of the child pursuant to Section 8 and 194 (1) (c) of the Children’s Act Cap 141 of the Laws of Kenya. This Court has satisfied itself that the Applicants are qualified and able to take care of the child. All the necessary. All the legal procedures were followed, documents were attached including sworn affidavits by the 3 parties – surrogate and the Applicants, a signed consent by the surrogate mother, Certificate of Memorandum of Acknowledgment and a report for this Adoption have been filed.

17. Article 14 (4) of *the Constitution* of Kenya 2010 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.”



18. This Court is therefore of the opinion that this Adoption would be in the best interest of the child and allows the application with Orders that;
- a. The Applicants, JS and NM are hereby allowed to adopt STKS (Minor).
 - b. Her date of birth shall be 2ND APRIL, 2024 at Aga Khan Hospital, Nairobi.
 - c. She is presumed to be a Citizen of Kenya by birth.
 - d. VFN and TD are hereby appointed as Legal Guardians of the child.
 - e. The Director Immigration is authorised to issue the child with a Kenyan Passport.
 - f. The Registrar General to enter this order in the Adoption Children Register
 - g. The Registrar General do issue a birth certificate indicating JS and NM (the Applicants) as father and mother of the minor.
 - h. The guardian *ad litem* is hereby discharged.

It is so ordered.

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 20TH DAY OF JUNE, 2025.

P. M. NYAUNDI

JUDGE

In the presence of:*

Masengeli for Applicant

Fardosa Court Assistant

