



**In re BS (Child) (Adoption Cause E002 of 2025)
[2025] KEHC 8505 (KLR) (18 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8505 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
ADOPTION CAUSE E002 OF 2025**

**AC BETT, J
JUNE 18, 2025
B.S (CHILD)**

IN THE MATTER OF

**FT 1ST APPLICANT
PN 2ND APPLICANT**

JUDGMENT

1. By an originating summons dated 15th January 2025, the 1st and 2nd Applicants seek to be authorized to adopt the minor B.S and that upon making the orders of adoption, the child to be called the same name B.S. The Applicants also seek that C.T. and M.O. be appointed as the Legal Guardians of the child in the event of death or incapacity of the Applicants before the child is of full age and self-reliant.
2. The 1st and 2nd Applicants are Kenyan citizens by birth currently residing and working in xxxxxx, Texas in the United States since 2014 and 2006 respectively. They also have three children aged 5, 6, and 7 years respectively and earn a substantial income sufficient to support themselves, their children and the minor.
3. According to the affidavit sworn by the child’s biological mother J.N.M on 20th January 2025, the child was born on 21st November 2017 and both parents are alive. However, they lack financial stability to provide for B.S and opted for adoption. She avers that C.T and M.O have been the primary providers of the child since she consented to the proposed adoption and have have enrolled him at Booker Academy which is a private school.
4. PW1, was Jacqueline Wambui Mwangi from KPPI Adoption Society who stated that they are the ones that handled the adoption process. She further stated that they issued a certificate declaring the child free for adoption. She also stated that they have no reservation to the proposed adoption.
5. PW2, was EOO. In a sworn affidavit he had consented to be appointed as the Guardian *ad Litem* to the minor. He stated that he filed a report which confirmed that the biological parents of the children



were agreeable to relinquishing their rights and responsibilities and that from his interaction with the Applicants, he could ascertain that they are suitable to adopt the child. The report was filed on 4th April 2025.

6. PW3 was Stephen Mule, the Sub-county Children Officer, Kakamega Central. He confirmed that he had filed his report on 7th April 2025 after he had carried out the assessment. He further stated that he had no objection to the adoption because it is a kinship adoption and is in the best interest of the child.
7. PW4 HNO stated that he resides in Bumula. He stated that he is not the biological father to B.S. He also stated that he had been noted as the father of B.S although but he is the grandfather. He further stated that the father of the child is known but he has never seen him nor has he taken up parental responsibility. He averred that he is the one who has been playing the role of the father and he gave the child his name. Moreover, he stated that the Applicants are his relatives. He consented to the adoption and said that he had no issue with the Applicants adopting the child.
8. PW5 was JNM. She is the biological mother of B.S and averred she did not know where the biological father is and that she has never seen him since conception. She stated that the 2nd Applicant was her uncle and the 1st Applicant is his wife. She is ready to give up the child and understands that once the child is adopted, her parental rights cease. She further stated that she has not been coerced to give up the child. PW6 was CT who stated that she understands her own responsibility as a Legal Guardian.
9. Prior to the hearing of the adoption, the KPPI Adoption Society, represented by PW1 had prepared an adoption bundle which is filed in court. They also issued a certificate declaring the child free for adoption. The certificate is dated 7th April 2025. The Director of Children's Service also prepared a report which is on record. All the reports are favourable and recommend that the court allows the Applicants to adopt the child.
10. This is a kinship adoption and therefore it falls under Section 185 of the [Children Act](#) 2022, which states as follows:-

“Children who may be adopted

- (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.”

11. I had perused the child's birth certificate and upon questioning PW5, I have established that the person named as the father of the child is actually the grandfather as he is the father of the child's mother. Both the child's mother and PW4 confirmed that the child's father has never been seen since conception. The certificate declaring the child free for adoption is therefore in order.
12. The Applicants are Kenyans albeit resident in Texas. According to the documents filed in court, they are both of good conduct, with no previous convictions for criminal offences. They have minor children who from the photographs annexed to the application, have bonded with the child. There is evidence that they have enrolled the child in a private school and are ready to assume all parental responsibility. They are financially stable, and being related to the child are willing to adopt him.
13. A homestudy report by KPPI concludes that the Applicants are eligible to adopt the child.
14. Article 53 (2) of the *Constitution* stipulates that in any matter concerning a child, the child's interests are of paramount importance. This provision is reiterated in Section 8 (1) of the *Children Act*, No 29 of 2022. Therefore, in dealing with adoption proceedings the court is enjoined to take due consideration of the aforesaid over-arching principle.
15. This court is empowered by Section 183 of the Act, to make an adoption order authorizing the Applicants to adopt the child as they fall under Section 186 (1) (a) and (3) of the said Act.
16. This being a kinship adoption, the existing indefinite moratorium on foreign adoption does not apply despite the fact that the Applicants live in a foreign land. *In Re J.N.A.* [2018] eKLR, the Court held that:-

“The indefinite moratorium issued by the Kenyan cabinet on 27th November, 2014 involved inter-country and resident adoptions of Kenyan children by foreigners. It does not affect adoptions by Kenya applicants, even those living abroad. Dual citizenship in our country is anchored in Article 16 of the Kenyan *Constitution*.

According to the Guidelines for Alternative Family Care of Children in Kenya page 153, “kinship adoption is adoption by adopters who are kin or relatives within the extended family of the child.” Kenyans living abroad and wishing to adopt a Kenyan child will adopt as Kenyans by way of domestic adoptions. This is therefore considered to be a local adoption.”
17. In the premises, there is nothing that impedes the court from making the orders for adoption of the child.
18. Having evaluated all the material before the court, I am satisfied that the Applicants have fulfilled the prerequisite conditions for the adoption orders to issue.
19. I therefore make the following orders:-
 - (1) The Applicants F.T. and P.N. be and authorized to adopt the minor, B.S.
 - (2) C.T. and M.O. are hereby appointed the Legal Guardians in the event misfortune befall the Applicants and they are unable to discharge their parental responsibilities.



- (3) The Guardian *ad Litem*, E.O.O. is hereby discharged.
- (4) The Registrar General is directed to make the appropriate entries in the Adopted Children's Register.

21. Those are the orders of the court.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 18TH DAY OF JUNE 2025.

A. C. BETT

JUDGE

In the presence of:

Ms. Mutunga holding brief for Ms. Masengeli for the Applicants

Applicants present virtually

Court Assistant: Polycap

