



**In re GRA (Minor) (Adoption Cause E064 of 2025)
[2025] KEHC 8151 (KLR) (Family) (12 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8151 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E064 OF 2025
H NAMISI, J
JUNE 12, 2025**

IN THE MATTER OF

**PAS 1ST APPLICANT
PTCS 2ND APPLICANT**

RULING

1. What began as a well-intentioned act, possibly a gesture of empathy and humanity, is now at loggerheads with the law. The Applicants, a married couple, are British citizens. Sometime in 2009, while working in Kenya as volunteer Christian missionaries, the Applicants encountered a child, who would later become part and parcel of their lives. The child in question, G.R.A, was born in Kitale, Kenya. The Applicants met the child at the Mercy Rescue Centre in January 2010, when the child was only two months old. She had no known relatives.
2. The Applicants quickly embraced the child. They obtained custody from the Rescue Centre vide letter dated 9 August 2010, signed by the District Children’s Officer in Trans Nzoia. They were subsequently granted legal guardianship of the child on 26 January 2012 by the Court in Kitale Children’s Case No 11 of 2011. The Applicants have been the primary caregivers and providers for the child for the last 14 years.
3. During these 14 years, the Applicants and child have travelled between Kenya and the United Kingdom. The child, who holds a Kenyan passport, obtained visas for each trip. Their last visit to the United Kingdom was on 28 August 2020. The Applicants and child were due to return to Kenya in December 2020 so that the child could resume her studies. It was at that time that the global COVID-19 pandemic caused the ban on international travel, leaving the child stranded in the United Kingdom. At the same time, the Applicants wound up their mission activities in Kenya and, thus, could no longer obtain work permits to be in Kenya. The odds of the child’s return to Kenya seemed to be against her.



4. Fortunately, the Kitale Court granted an extension, allowing the child to remain in the United Kingdom until 2026 when she completes her schooling. The child enrolled at Gillingham School, where she is performing exceedingly well.
5. It is said that sometimes bad luck hits you like in an ancient Greek tragedy, and it's not your own making. Seemingly, a string of back luck seemed to mar this perfect picture. Time, and the law, caught up with Applicants and the child. The child's Kenyan passport expired on 5 April 2021. Her UK visa expired on 18 October 2021. The UK Visas and Immigration Division of the UK Home Office had extended the child's stay in the United Kingdom, but the same expired, too, on 21 November 2019. The child had been granted Leave Outside the Rules (LOTR) under the Immigration Rules for Discretionary Leave to remain in the United Kingdom. That, too, expired on 8 August 2024.
6. Certainly when it rains, it certainly pours. The UK Visas and Immigration Division of the UK Home Office expressed its inability to extend the child's stay any further, thus placing the child at the risk of deportation. Meanwhile, the Applicants are unable to access the Kenya Government's e-citizen portal in order to apply for a passport for the child. Further, an application for a UK Visa requires the child to be present in Kenya, yet the child is unable to travel to Kenya without a valid passport.
7. It is this conundrum that has necessitated these proceedings. By Notice of Motion dated 17 March 2025, the Applicants seek the following orders:
 - i. Spent
 - ii. That the Kenya Children's Home be and is hereby directed to prepare and file an Adoption Report in respect of this adoption matter. The adoption agency has requested the Applicants to move the Court for orders to compel it to prepare a report and freeing certificate for the minor;
 - iii. That an officer from the Kenya Children's Home be and is hereby directed to appear before this Honourable Court on a date to be determined by this Court to adopt the Adoption Report at the hearing of the main suit;
 - iv. That the Director of Children Services, Ministry of Labor, Social Security and Services Office in Trans Nzoia through their officer C.Jakait Elijah be and is hereby directed to appear before this Honourable Court to adopt the Children's Officer's Report dated 1 July 2019;
 - v. That pending the renewal and re-issuance of the minor's passport, the Kenyan High Commission in the United Kingdom be and is hereby directed to issue the minor through her legal guardians with a Temporary Permit (Electronic Travel Authorization (eTA) to enable her travel to Kenya, if need be, for the purpose of this suit;
 - vi. That pending the hearing and determination of the adoption application this Court do grant an order allowing the Applicants in their capacity as the legal guardians to the minor to apply for the renewal of her Kenyan Passport No A15999841 on the behalf of the minor at the Kenyan High Commission in the United Kingdom;
 - vii. That pending the hearing and determination of the adoption application the Kenyan High Commission in the United Kingdom be and is hereby directed to renew and re-issue the minor's passport No. A15XXX841 upon Application by the duly authorised legal guardians on her behalf
 - viii. That the cost of this Application be in the cause.



8. The Application is premised on the grounds on the face of it and supported by an Affidavit. The Applicants aver that they have been unable to adopt the minor because of the existing moratorium on inter-country and resident adoptions that was issued on 26 November 2014. This means, therefore, that the Applicants are unable to apply for British citizenship and British passport for the child. They confirm that they have been taking care of the child and want to continue taking care of her as a member of their family.
9. The Applicants presented a copy of Report prepared by C. Jakait Elijah, from the Director of Children Services, Trans Nzoia County dated 1 July 2019. The Report was presented to the Children’s Court at Kitale. The child was 9 years old at the time. The Report indicates that the Applicants and child have a strong bond and have built good rapport, family ties and friendliness.
10. The Applicants also presented a copy of Child assessment Report prepared by the Dorset Council in the United Kingdom and Children Services Report prepared by Ms. Rebecca Welsh on 3 April 2024 confirming their fitness to adopt the child.
11. Counsel for the Applicants filed written submissions in which she made a passionate appeal for the orders to be granted despite the existence of the moratorium banning adoptions by foreign applicants. In her spirited arguments, Counsel pleaded with the Court to act in the best interest of the child, arguing that the child has been in the custody of the Applicants since she was 2 months old and knows no other family.
12. In particular, Counsel made reference to the case of *Re: PM (baby)* [2017] eKLR, in which Honourable Lady Justice Farah Amim found that the moratorium notwithstanding, an adoption order needs to be made to the best interest of the child.
13. Further, *in Re: baby K.R., Adoption* Cause No. 123 of 2015 (OS) [2015] eKLR in which the High Court observed that the cabinet moratorium is inferior to the *Children Act* and Constitution. The Honorable Justice Muchelule opined thus:

“.... it was not open to the Director to hide behind the cabinet moratorium or gazette notice. These two were certainly inferior to the order which had a statutory basis.”
14. The two cited cases are indeed persuasive in urging this Court to overlook the moratorium banning foreign adoptions. This is, however, one distinction to be made between the Baby K.R case (supra) and the current one. The circumstances in which the Applicants herein find themselves is uniquely different simply because at present, there exists a specific legal provision that prohibits adoptions by foreign nationals. The amendments to the *Children Act* brought forth changes in the legal framework governing adoptions. Some of these changes include the provision of section 186(6)(f), which elevates the ban on foreign adoptions from a mere moratorium to a provision in law. The section provides as follows:

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 is a foreign applicant except where the applicant is a biological relative of the child.
15. Without a doubt, the provision poses a new challenge to an already complicated situation. This Court has been called upon to grant orders to compel the Directorate of Children’s Services to prepare and present a report with respect to adoption proceedings by the Applicants, in light of clear statutory provisions that prohibit such an adoption.



16. At the same time, this Court is alive to its duty under *The Constitution* to protect and promote the purpose and principles of *The Constitution*. Under Article 53(2) of *The Constitution* and section 8(1) and (2) of the *Children Act*, this Court is commanded that in all actions and cases concerning children the best interests of the children shall be the paramount consideration.
17. This principle is buttressed in various international instruments to which Kenya is a party. Article 4(1) of the African Charter on the Rights and Welfare of the Child provides as follows:
- In all actions concerning the child undertaken by any person or authority the best interests of the child shall be the primary consideration.
18. Article 3 of the Convention on the Rights of the Child provides as follows, inter alia:
1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
 2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
19. At present, the legal avenues open to the Applicants and, indeed, the child are limited. The child is currently residing in the United Kingdom, without a valid Kenyan passport to enable her travel to Kenya. Her UK Visa has since expired and she faces possible deportation to Kenya, where she has no known relatives. She cannot travel to Kenya and cannot extend her stay in the United Kingdom without a visa, which application can only be done in Kenya. She is 14 years old, facing an uncertain and very frightening future, unless this Court intervenes in one way or another. This requires juggling the delicate balance between the best interests of the child and upholding the law.
20. The child is a citizen of Kenya and entitled to all the rights and privileges appurtenant thereto. This includes the right to a passport as provided in Article 12 (1)(b) of *The Constitution*. Further, she is entitled to social protection, which includes protection from abuse and neglect, which she is likely to face if she is deported to Kenya where she has no family.
21. I have carefully considered the Application and the situation that the child finds herself in. I am, therefore, minded to invoke the inherent powers of the Court and make the following orders:
- i. That at present, the Application is allowed in terms of prayers 5, 6 and 7;
 - ii. That the Kenyan High Commission in the United Kingdom is hereby directed to issue the minor through her legal guardians with a Temporary Permit (Electronic Travel Authorization (eTA) to enable her travel to Kenya;
 - iii. That pending the hearing and determination of the adoption application, the Applicants, in their capacity as legal guardians of the minor, are hereby authorised to apply for the renewal of her Kenyan Passport No A159XXX41 on the behalf of the minor at the Kenyan High Commission in the United Kingdom;



- iv. Pending the hearing and determination of the adoption application the Kenyan High Commission in the United Kingdom is hereby directed to renew and re-issue the minor's passport No. A15999841 upon Application by the Applicants on behalf of the child;
- v. Summons to issue to C. Jakait Elijah, Directorate of Children Services, Trans Nzoia County, Ministry of Labor, Social Security and Services to appear before this Court on 25 September 2025.
- vi. Prayers 2, 3 and 4 are held in abeyance pending further directions on the application.
- vii. Matter to be mentioned on 25 September 2025 to determine the progress.
- viii. There are no orders as to costs.

DATED AND DELIVERED AT NAIROBI THIS 12 DAY OF JUNE 2025

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

N/A.....for the Applicants

Libertine AchiengCourt Assistant

