



**In re BS & BS (Minors) (Adoption Cause E018 of 2024)
[2025] KEHC 8251 (KLR) (9 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8251 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
ADOPTION CAUSE E018 OF 2024
JM NANG'EA, J
JUNE 9, 2025
IN THE MATTER OF ADOPTION OF B.S & B.S (MINORS)**

IN THE MATTER OF

MAF 1ST APPLICANT

FM I 2ND APPLICANT

JUDGMENT

1. Vide Originating Summons dated 28/8/2024 expressed to be brought pursuant to sections 157, 160, all other enabling provisions of the Children Act No. 8 of 2001 and Legal Notice No. 75 of 2002, the Applicants pray for orders as hereunder;
 1. Spent.
 2. Spent.
 3. Spent.
 4. That the consent of the biological mother of B.S and B.S (minors) has been obtained (sic).
 5. That the Applicants be authorized to adopt Masters B.S & B.S (minors) and the child be called the same henceforth.(sic)
 6. That the Registrar - General do make the appropriate entries in the Adopted Children's register in respect of B.S and B.S (minor) (sic).
 7. That the minor herein be considered a Kenyan citizen (sic).
 8. That the court do issue such other orders as may be necessary in the best interests of the child (sic).
 9. That the costs of this application be in the cause.



2. It is noted that the Application is brought under the repealed *Children Act* No. 8 of 2001 instead of the now operational *Children Act* No. 29 of 2022. Nevertheless, the court will ignore the technical defect by dint of Article 159 (2) (d) of *the constitution* and determine the merits of the Application.
3. The Application is supported by the Applicants' joint affidavit sworn on 28th August 2024 as well as their oral evidence in which they inter alia express their desire to adopt the children who are twins aged 15 years or thereabouts born to the 2nd Applicant. Their biological father is said to have abandoned their mother while she was pregnant. The court is further told that the Applicants are spouses and the 1st Applicant, a Swiss national, has been taking good care of the children and their mother. The 1st Applicant who is 60 years old avers that he is capable of taking care of the children which duty he has been undertaking after his marriage to the 2nd Applicant. He exhibited evidence of his earnings of approximately Ksh. 200,000 per month as a Pensioner benefiting from the Swiss Government's Central Compensation Office. The court is further told that the Applicants' family members are not opposed to the Application.
4. Elizabeth Teckila Saka is the subjects' maternal grandmother and Guardian Ad Litem appointed by this court . She positively appraises the 1st Applicant noting that he has been taking good care of the children. Although she acknowledged that the 1st Applicant has his own biological children, he is said to have nevertheless provided adequately to the Subjects.
5. The Nakuru County Children's Co-ordinator (Khaemba Pilot) does not also object to the application and approves the 1st Applicant as suitable to adopt the children. He did not testify but filed a report dated 16th January 2023 showing that he visited the Applicants and the Subjects in their home and the home was found to be a good family environment.
6. The Subjects were themselves interviewed by the court. They stated that the 1st Applicant has been a good putative father . It appeared from their testimony that they didn't even know that he was not their biological father.
7. Having perused the reports and evidence in respect of the Application, the court's duty is to determine if the 1st Applicant is fit to adopt the Subjects. Article 53 (2) of *the Constitution* provides that the child's best interests are the paramount consideration in every aspect concerning the child's welfare. This legal position is reiterated in Section 8 (1) of the Children's Act 2022 which provides that:

“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 the primary consideration.”
8. This principle is underscored in Article (2) of the Geneva Declaration of the Rights of the Child (1924) as well as in Article 3 of the United Nations Convention on the Rights of the Child. The Kenyan courts in many cases including in *Re B (Baby [2018] eKLR)* have given effect to this important principle by restating that the law is intended to protect and promote the welfare of children by according them stable family units under which to grow. Indeed Article 45(1) of *the Constitution* declares as follows:

“The family is the natural and fundamental unit in society and the necessary basis of social order, and shall enjoy the recognition and protection of the State.”
9. Section 186 of *Children Act* provides inter alia that a sole Applicant aged between 25 and 60 years and more than 21 years older than the child qualifies for an adoption order.



10. The Subject children no doubt require full parental care and guidance as well as provision of basic rights like shelter , education, health and clothing. I am satisfied that the 1st Applicant has the requisite qualities and capacities to guarantee the children’s welfare which he is already providing to the satisfaction of the children and ther mother and Co-Applicant. The Applicants therefore meet the requirements of the law and I will allow them to be the Subjects, both being suitable to execute the critical parental role.
11. The following orders accordingly issue;-
 - a. The Applicants are hereby authorized to adopt the subject children.
 - b. The Registrar General is directed to enter this adoption order in the Adopted Children’s Register and issue a necessary Certificate to that effect.
 - c. That the appointment of the Guardian Ad Litem is revoked and she will instead be the Legal Guardian of the children pursuant to the provisions of Section 195 (1) of the *Children Act* N0. 29 of 2022.
 - d. No order is made as to the costs of the application.
12. Judgement accordingly.

J. M. NANG’EA, JUDGE.

Judgement delivered virtually this 9th day of June 2025 in the presence of:

The Applicants’ Advocate, Ms Ntabo for Mr Omenta.

The Applicants, Absent.

The Court Assistant, Jeniffer.

J. M. NANG’EA, JUDGE.

