



**In re Adoption of Baby NWM (Adoption Cause E074 of 2025)
[2025] KEHC 8141 (KLR) (Family) (6 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8141 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

FAMILY

ADOPTION CAUSE E074 OF 2025

H NAMISI, J

JUNE 6, 2025

IN THE MATTER OF ADOPTION OF BABY NWM

IN THE MATTER OF

EWM 1ST APPLICANT

HMN 2ND APPLICANT

High Court allows the adoption of a child born through a surrogacy agreement by the intended parents

The application sought for orders of adoption the subject child born out of gestational surrogacy. The court reiterated that surrogacy was not a hypothetical issue any more. It was real and many Kenyans were turning to surrogacy as an alternative to being parents especially those who could not for medical reasons have their own children. The court noted that the legal prerequisites for adoption were set in section 184(1) of the Children Act and allowed the adoption of the child by the intended parents.

Reported by Kakai Toili

Family Law – children – adoption – adoption of children born through surrogacy agreements – what were the legal prerequisites for the adoption of a child born through a surrogacy agreement – Children Act (cap 141), section 184(1).

Brief facts

The applicants were a married couple who went through a long and agonizing journey seeking to have a child of their own. They opted for surrogacy as a solution. The applicants sought to adopt the child in order to regularize her position as a legitimate and valued member of their family. The child was the biological child of the 2nd applicant and was born out of gestational surrogacy where the gametes of the 2nd applicant were fused with the gametes of a donor and implanted into the womb of the surrogate. Upon delivery, the child was handed over the applicants in accordance with the surrogacy agreement and they took over parental responsibility over the child. The application thus sought among other orders the adoption the child.



The surrogate mother confirmed that she had voluntarily and unequivocally agreed to vest the guardianship, custody, care and control of the child to the applicants.

Issues

What were the legal prerequisites for the adoption of a child born through a surrogacy agreement?

Relevant provisions of the Law

Children Act, Cap 141

Section 184 - Pre-requisites for Adoption

(1) A person shall not commence any arrangements for the adoption of a child unless—

(a) the Council, in accordance with the rules, has declared the child free for adoption; and

(b) the child has attained the age of six weeks.

Held

1. Surrogacy was not a hypothetical issue any more. It was real and many Kenyans were turning to surrogacy as an alternative to being parents especially those who could not for medical reasons have their own children. Unfortunately, due to the lack of a legal regime to regulate surrogacy arrangements, parents found themselves in a situation such as the instant one. They were forced to adopt their own biological children.
2. The legal prerequisites for adoption were set in section 184(1) of the Children Act. The child was born on December 19, 2024. The child was currently aged six months old and was well above the six week age limit, provided in law. Change Trust, a registered adoption agency, filed a report dated January 24, 2025. The child was also declared free for adoption. All legal prerequisites for adoption had been met in the case.
3. Both applicants were citizens of Kenya and had presented copies of their title deeds, bank account details, police clearance certificates as well as recommendations, all pursuant to the provisions of the Children (Adoption) Regulations, 2020. They disclosed that the applicants were financially, socially, physically and mentally fit to adopt the child.
4. The applicants indicated to the court that the respective families had already accepted the child and recognized the child as a member of the family. They were aware of the circumstances of the conception and birth of the subject child. Both families supported the intention of the applicants to adopt the child and have wholeheartedly welcomed the child into the family.
5. The applicants had appointed a legal guardian for the child. The legal guardian had signed a consent dated March 14, 2025, indicating his willingness to act as legal guardian for the child. All in all, the applicants were suitable adoptive parents.
6. When deciding upon any matter involving a child, courts were obliged to give priority to the best interests of the child, pursuant to section 8 of the Children Act. The adoption was essentially a kinship adoption. The 2nd applicant was the biological father of the child. The 1st applicant was the legal wife of the child's father. The child had lived with the applicants from the time she was born.
7. The reports prepared by the adoption agency, the guardian *ad litem*, as well as the Director of Children's Services were positive and all recommended adoption. At the hearing, the court was able to see the child, who lay peacefully in the arms of the 1st applicant. Additionally, the applicants had annexed several photographs showing their happy and loving interaction with the child. The child had bonded with the applicants, especially because they were the only parents she knew. The adoption was in the best interest of the child.

Application allowed.

Orders

- i. *EWM and HMN, were authorized to adopt the child known as NWM.*
- ii. *Bishop PGN was appointed as the legal guardian of the child.*



- iii. *The guardian ad litem was discharged.*
- iv. *The Registrar General was directed to make the appropriate entries in the Adopted Children's Register.*

Citations

Cases

Kenya

1. *In the Matter of Baby TDL Adoption Cause 238 of 2012; [2014] KEHC 8012 (KLR) - (Explained)*
2. *JLN & 2 others v Director of Children Services & 2 others; Kenya National Human Rights Commission & another (Interested Parties) Petition 78 of 2014; [2014] KEHC 7491 (KLR) - (Explained)*

Statutes

Kenya

1. Children (Adoption) Regulations, 2020 (cap 141 Sub Leg) In general - (Cited)
2. Children Act (cap 141) section 8 - (Interpreted)
3. Constitution of Kenya article 14(1) - (Interpreted)

Advocates

Ms. Nyaguthie for Applicants

JUDGMENT

1. I wish to borrow the words of Hon Lenaola, J in the case [*JLN & 2 others v Director of Children Services & 2 others; Kenya National Human Rights Commission & another \(Interested Parties\)*](#) (Petition 78 of 2014) [2014] KEHC 7491 (KLR). Surrogacy is not a hypothetical issue any more. It is real and many Kenyans are turning to surrogacy as an alternative to being parents especially those who cannot not for medical reasons have their own children. Unfortunately, due to the lack of a legal regime to regulate surrogacy arrangements, parents find themselves in a situation such as the one herein. They are forced to adopt their own biological children.
2. Before this court is the originating summons dated March 14, 2025, by which the applicants seek the following orders:
 - i. That this honourable court be pleased to order that EWM and HMN be allowed to adopt the subject minor child identified as NWM;
 - ii. That Bishop PGN be appointed as the Legal guardian of the child NWM in the event that the applicants herein are incapacitated or in any way unable to discharge their parental obligations and/or in the event that anything happens to the Adoptive Parents that prevents them from taking care of the minor including death. Physical impairment or debilitating disease;
 - iii. That the Guardian ad litem, SMM, be discharged;
 - iv. That the adoptive parents are free to relocate the minor from Kenya to any other country in the world that they may be resident;
 - v. That the Registrar General be directed to make the appropriate entries into the Adopted Children's Register;
 - vi. That this honourable court be pleased to grant such other or further Orders as it may deem fit to grant in the best interests of the minor child namely NWM.



The Child

3. The child herein was born on December 19, 2024. She is the biological child of the 2nd applicant. The child was born out of gestational surrogacy where the gametes of the 2nd applicant were fused with the gametes of a donor and implanted into the womb of the surrogate. Upon delivery, the child was handed over to the applicants in accordance with the surrogacy agreement and they took over parental responsibility over the child.

The Applicants

4. The applicants are a couple. They got married in 2020 in the state of Washington, USA. The applicants went through a long and agonizing journey seeking to have a child of their own. When this did not yield any fruit, they opted for surrogacy as a solution. The 2nd applicant is the biological father of the child as evidenced by the annexed Birth Certificate as well as the results of the DNA test contained in the Report dated January 8, 2025. The applicants now wish to adopt the subject child in order to regularize her position as a legitimate and valued member of their family.
5. Both applicants confirmed that they are aware of the legal implications of an adoption order. They undertake to accord the child all rights due to a biological child, including the right to inherit. Additionally, the applicants enjoy the full support of their extended family in this decision.

The Surrogate

6. The surrogate mother, AAK, appeared before the court and confirmed that she has voluntarily and unequivocally agreed to vest the guardianship, custody, care and control of the child to the applicants. She filed a consent dated March 4, 2025 relinquishing all her rights to the child.

Analysis and Determination

7. The legal prerequisites for adoption are set in section 184(1) of the *Children Act*, which provides as follows:

A person shall not commence any arrangements for the adoption of a child unless—

 - (a) the council, in accordance with the rules, has declared the child free for adoption; and
 - (b) the child has attained the age of six weeks.
8. The child was born on December 19, 2024. Annexed to the application is the child's certificate of birth. The child is currently aged six months old and is well above the six (6) week age limit, provided in law.
9. Change Trust, a registered adoption agency, filed a report dated January 24, 2025. The child was also declared free for adoption vide certificate serial number xxxxx. I, therefore, find that all legal prerequisites for adoption have been met in this case.
10. The duty of this court is to analyze the evidence on record to determine whether the applicants are suitable adoptive parents. Both applicants are citizens of Kenya. The Applicants have presented copies of their title deeds, bank account details, Police Clearance Certificates as well as recommendations, all pursuant to the provisions of The *Children (Adoption) Regulations*, 2020. These disclose that the applicants are financially, socially, physically and mentally fit to adopt the child.
11. The Applicants indicated to the court that the respective families have already accepted the child and recognize her as a member of the family. They are aware of the circumstances of the conception and



- birth of the subject child. Both families support the intention of the applicants to adopt the child and have wholeheartedly welcomed the child into the family.
12. The applicants have appointed Bishop PGN as the legal guardian for the child. The said legal guardian has signed a consent dated March 14, 2025, indicating his willingness to act as legal guardian for the child. All in all, I am satisfied that the applicants are suitable adoptive parents.
 13. Article 14 of the *Constitution of Kenya, 2010* deals with the question of Citizenship. article 14(1) provides as follows:-

“A person is a citizen by birth if on the day of the person’s birth, whether or not the person is born in Kenya, either the mother or father of the person is a citizen.”
 14. In deciding upon any matter involving a child, courts are obliged to give priority to the best interests of the child, pursuant to section 8 of the *Children Act*.
 15. This adoption is essentially a kinship adoption. The 2nd applicant is the biological father of the child. The 1st applicant is the legal wife of the child’s father. The child has lived with the applicants from the time she was born.
 16. I have perused the reports prepared by the Adoption Agency, the Guardian ad litem, as well as the Director of Children’s Services. All three reports are positive and all recommend adoption.
 17. At the hearing, the court was able to see the child, who lay peacefully in the arms of the 1st applicant. Additionally, the applicants have annexed several photographs showing their happy and loving interaction with the child. I have no doubt that the child has bonded with the applicants, especially because they are the only parents she’s ever known.
 18. *In the matter of Baby TDL* [2014] eKLR, Hon Justice Musyoka held as follows:-

“I have noted the ethical concerns raised by the director of children’s services in his report. I have taken note that he has recommended the proposed adoption, save that he has misgivings about certain matters on a purely moral standpoint. Legally, surrogacy arrangements are valid and have been upheld in other jurisdictions. The Kenyan state has been slow in passing legislation to deal with surrogacy arrangements, that, however, should not, in my view, affect the legality of such arrangements so long as they are entered into freely by consenting adults and are in the best interests of the child the subject of the arrangements. In my view, the child in this case will not be prejudiced in any way, and the present arrangements are in his best interests.”
 19. Similarly, in this instance, the adoption is in the best interest of the child.
 20. In the premise, I am satisfied that this adoption serves the best interests of the child, Accordingly, I do allow this Application and make the following orders:
 - i. EWM and HMN, are hereby authorized to adopt the child known as NWM;
 - ii. Bishop PGN is hereby appointed as the legal guardian of the child;
 - iii. The Guardian *ad litem* is hereby discharged;
 - iv. The Registrar General is directed to make the appropriate entries in the Adopted Children’s Register;

DATED AND DELIVERED AT NAIROBI THIS 6 DAY OF JUNE 2025.



HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

Ms. Nyaguthie..... for the Applicants

Applicants present

Libertine Achieng .. Court Assistant

