



**In re J alias JS (Child) (Adoption Cause E108 of 2025)  
[2025] KEHC 11078 (KLR) (Family) (25 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11078 (KLR)

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

**FAMILY**

**ADOPTION CAUSE E108 OF 2025**

**PM NYAUNDI, J**

**JULY 25, 2025**

**IN THE MATTER OF ABANDONED BABY BOY ALIAS J**

**IN THE MATTER OF**

**RKK ..... 1<sup>ST</sup> APPLICANT**

**TMK ..... 2<sup>ND</sup> APPLICANT**

**JUDGMENT**

1. Vide Originating Summons, dated 10th April, 2025 the Applicants herein seek the following orders, that:-
  - i. Spent
  - ii. Spent
  - iii. They be authorized to adopt Abandoned Baby Boy alias JJ alias JS to be known as GMK.
  - iv. The child be presumed a Kenyan Citizen by birth.
  - v. The child's date of birth be 3<sup>rd</sup> August, 2024 and the place of birth be Athi River.
  - vi. The Registrar General be directed to enter the adoption in the Adopted Children Register.
  - vii. The Director Immigration be authorized to issue the child with a Kenyan passport.
  - viii. DMW and JWM be appointed the Legal Guardians of the child in the event of the death or incapacity of the Applicants before the child is of age or independent.
  - ix. The Court be pleased to make any further orders it deems necessary.



2. This is a joint Application. The 1<sup>st</sup> Applicant is a Kenyan Citizen while the 2<sup>nd</sup> Applicant is an American Citizen residing in Ruaka, Nairobi County. They solemnized their marriage in State of Minnesota under Civil Law on 18<sup>th</sup> November, 2021 as per the annexed copy of marriage certificate serial number 20XXXX68 dated 8<sup>th</sup> December, 2021. They are in gainful employment. The 1<sup>st</sup> Applicant is a Business Development Manager in [Particulars Withheld] while the 2<sup>nd</sup> Applicant is a Physician Assistant in University of [Particulars Withheld]. They have sufficient family income, finances and assets to enable them take good care of the child. However, the 2<sup>nd</sup> Applicant was previously married and got two (2) issues out of that marriage namely MK and EK. Later both Applicants were blessed with their biological child namely HJW. They would like to grow their family and give a chance to a child who has no family.
3. They have had custody since November, 2024. The minor is 10 months old. They both understand the implications of the adoption order, they are aware that the child will have full rights as would a biological child and the order is not reversible.
4. The minor herein (Abandoned Baby Boy alias JJ alias JS) is presumed to have been born on 3<sup>rd</sup> August, 2024 at Athi River Level Four Hospital to SN and JMB as per the annexed Birth Certificate serial number 19XXXX98. The child's biological mother offered the child for adoption as she indicated that together with the child's biological father were not in a position to raise the child. This prompted the child's mother to write a letter offering her child to children's home, it is said that she took off before signing any consent. That on 7<sup>th</sup> August, 2024 the child was placed at Mahali Pa Maisha Infant Rescue Centre for care and protection. Later the matter was reported by a medical social worker to Athi River Police Station Vide OB Number 28/07/08/2024.
5. Later, the child was formally committed at the same facility pursuant to Court order issued by the Children's Court at Mavoko on 4<sup>th</sup> September 2024, vide Protection and Care File Number 43 of 2024. That the police tried tracing the child's biological mother but their efforts bore not fruit.
6. The Applicants approached the Change Trust Adoption Society, they were taken through an Explanatory Memorandum they signed Certificate of Acknowledgment. Subsequently, Change Trust Adoption Society, through their committee sitting on 9<sup>th</sup> December, 2023 confirmed that they had assessed the Applicants and found them suitable adoptive parents 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 00XXXX.
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. Winfred Ikanya, the Assistant Director Children Services filed a positive report dated 30<sup>th</sup> June 2025, through her visit she noted a strong bond have developed between the child; the Applicants and their other three children. The child is well fed and clothed. The home is conducive for the child to grow in.  
  
The Applicants have met all legal requirements for local adoption as stipulated in the *Children Act* 2022. They are socially, mentally and financially stable. However, she noted that the 2<sup>nd</sup> Applicant is an American Citizen yet to obtain Kenyan Citizenship. The Applicants are clear of any criminal claim as evidenced by the Reference Bureau Check, specializing in employee background, their records as of 11<sup>th</sup> January, 2024. There is also police clearance certificate number PCC-ZXXXXVA for the 1<sup>st</sup> Applicant. The Officer recommended the adoption process.
8. ACM, Guardian Ad Litem, presented report dated 22<sup>nd</sup> May, 2025 in which during his visit, he observed that the Applicants are capable, loving, and well prepared to raise the child. Additional, the home is stable, secure and filled with warmth providing a nurturing environment for the child



continued growth and development hence highly recommending Applicants to adopt the child since it is in the child's best interests.

9. Proposed Legal Guardians (DMW and JWM) testified in Court that they are cousins to 1<sup>st</sup> Applicant and in-laws to 2<sup>nd</sup> Applicant. That they are legally married and resides in Nairobi. Consequently, they consented to be the legal guardians for the minor. They understand the legal implications and they will assume full parental responsibilities in the event the Applicants are unable to discharge their responsibilities.
10. The Court interviewed their other children and their consent was obtained as well as written notes.

### **Determination**

11. 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.
12. 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.
13. The 1st Applicant being an American Citizen lacks threshold to adopt the child according to Section 186 (6) (f) of the [Children Act](#), however by the dint of being married to 1st Applicant who is a Kenyan Citizen, having a child together as well as living in Kenya and owning assets in Kenya the Court can has discretion to allow the application since 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. The consent of the biological parents of the child was dispensed with since the child was abandoned at birth. The Court observed that the child was comfortable with the Applicants. This Court has satisfied itself that the Applicants are qualified and able to take care of the child. All the necessary Reports and consents required for this Adoption have been filed.
14. 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.”
15. This Court is therefore allow the application and orders as follows that;



- a. The Applicants, RKK and TMK are hereby allowed to adopt Abandoned Baby Boy Alias JJ alias JS.
- b. Henceforth, the child shall be known as GMK.
- c. He is presumed to be a Citizen of Kenya by birth.
- d. His date of birth shall be 3<sup>rd</sup> August, 2024 at Athi River, Machakos County.
- e. DMW and JWM are hereby appointed as Legal Guardians of the child.
- f. The Registrar General to enter this order in the Adoption Children Register.
- g. The Director Immigration is authorised to issue the child with a Kenyan Passport.
- h. The guardian ad litem is hereby discharged.

It is so ordered.

**SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 25<sup>TH</sup> DAY OF JULY, 2025.**

**P. M. NYAUNDI**

**JUDGE**

In the presence of:

Muthoni holding brief for Ms. Kiguatha for Applicants

Fardosa Court Assistant

