



**In re JM (Minor) (Adoption Cause E002 of 2023)
[2025] KEHC 10987 (KLR) (25 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10987 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
ADOPTION CAUSE E002 OF 2023
MA ODERO, J
JULY 25, 2025
IN THE MATTER OF ADOPTION OF JM (MINOR)**

IN THE MATTER OF

DNG APPLICANT

JUDGMENT

1. Before this Court is the Originating Summons dated 21st July 2023 by which the Applicant DNG seeks the following orders:-
 - “1. That the Applicant herein be authorized to adopt the said child.
 2. That the child be presumed to be a Kenyan citizen having been born in Kenya.
 3. That the Guardian *ad litem* ITN be discharged and CWG be appointed as the legal guardian of the minor herein in the event that the applicant herein is in any way incapacitated or in any way unable to discharge his parental obligations.
 4. That the Court does issue such other orders as may be necessary in the best interest of the child.”
2. The Application was supported by the Affidavit of even date sworn by the Applicant. The matter was heard by way of *viva voce* evidence on the virtual platform.
3. The Applicant is an adult Kenya citizen who currently resides in the United States of America. The Applicant is single and has no biological children of his own. The Applicant wishes to adopt the subject child who is his niece being the child of his late sister.
4. The Applicant confirmed to the court that he fully understands the legal implications of an adoption order. He undertakes to accord to the subject child all rights which are due to a biological child.



Analysis and Determination

5. I have considered this application for adoption, the evidence adduced in support thereof as well as the various reports filed in court.
6. The prerequisites for adoption are set out in Section 184 (1) (a) and (b) of the [Children's Act 2022](#) as follows:-
 - “(1) A person shall not commence any arrangement for the adoption of a child unless:-
 - a. The council, in accordance with the rules, has declared the child free for adoption.
 - b. The child has attained the age of six weeks.”
7. The subject child is a girl child who was born on 2nd October 2020. A copy of her Birth Certificate Serial Number 78XXXXX is annexed to the summons. As such the subject child is now aged four and half (4½) years old and is well above the six (6) week age limit provided for in law.
8. Change Trust which is a registered adoption agency have annexed to the Summons a copy of their Certificate Serial Number 00XXXXX dated 11th October 2024 declaring the child free for adoption. Accordingly I am satisfied that the legal pre-requisites for an adoption order have been met.
9. The duty of this court is to review the evidence and material before it to determine whether the Applicant is a suitable adoptive parent.
10. The Applicant is a Kenyan Citizen. He has annexed a copy of his National Identity Card Serial No. 29XXXXX.
11. The Applicant told the Court that he is not married and has no biological children of his own. Section 186 (1) of the [Children Act](#) 2022 provides that an adoption order may only be made in respect of an Applicant who has attained the age of twenty five (25) years but is not above the age of sixty five (65). The Applicants Identity Card indicates that he was born on 31st July 1992. He is therefore now aged thirty three (33) years old and qualifies to adopt a child.
12. The previous [Children Act](#) 2001 prohibited the making of an adoption order in favour of a sole male Applicant in respect of a female child.

However Section 486 (4) of new 2022 [Children Act](#) provides that

“(4) The court shall not make an adoption order in respect of a sole male applicant, unless the applicant is a blood relative of the child.” [own emphasis]

13. Similarly Section 186(b) of the [2022 Act](#) provides as follows:-

“(6) 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

- (a)
- (b)
- (c)



- (d)
- (e) Is a sole male applicant except where the applicant is a biological relative of the child; or
- (f)"

14. It is therefore clear that the previous prohibition against a sole male applicant adopting a child in Kenya no longer exists. There is however the rider that the applicant in question should be a blood relative of the child.
15. In this case the applicant being a brother to the child’s biological mother is the maternal uncle to the child. As such the applicant is a blood relative to the child and may be authorized to adopt said child.
16. The Applicant told the court that he currently resides in the United States of America having moved there in the year 2014, upon securing a Green Card. The Applicant stated that he currently works as a software Engineer for Lumen Technologies in the state of Pennsylvania.
17. The Applicant has annexed copies of his financial statements in respect of checking account held with Capital one. These statements reveal that the applicant is financially secure and has the capacity to provide for the needs of the subject child.
18. The Applicant has also annexed to his further list of documents a Clearance Certificate issued by the Directorate of Criminal Investigations proving that he does not have a criminal record.
19. Finally the applicant has appointed his mother CWG as the legal Guardian for the child. The said legal guardian has signed a consent dated 19th July 2025 indicating her willingness to be the legal guardian for the child.
20. The subject child is a girl who was born in October 2020. The child’s biological mother SMG Gitahi unfortunately passed away on 20th February 2022. A copy of the Death Certificate Serial Number 13XXXX is annexed to the Summons.
21. Following the demise of the mother the child has been living with her maternal grand-mother in Naromoru, Nyeri County.
22. The child’s biological father has never featured in her life both before and after the demise of the child’s mother. The Applicant and PW2 who is the child’s grandmother told the court that they are not aware of the identity or the whereabouts of the child’s biological father.
Indeed in the child’s birth certificate the Section indicating the name of ‘Father’ has been left blank.
23. Section 186 (8) of the *children Act* 2022 provides that an application for consent must be accompanied by the written consent of the parent or legal guardian of the child.
24. Section 187 (c) provides that;-

“ 187 The court may dispense with any consent required under Section 186 (8)

(1) paragraphs (a) (b) and (c) if the Court is satisfied;-

- (a)
- (b)
- (c) In any other case in respect of the consents required under Section 186 (8) (c) and (9), the person whose consent is required



cannot be found or is incapable of giving his or her consent, or that his or her consent has been unreasonably withheld.”

25. In line with the above provision I hereby dispense with the requirement for consent from the child’s biological father. The child’s guardian (grandmother) testified before court. She indicated that she consents to this adoption.
26. In deciding upon any matter involving a child, courts are obliged to give priority to the ‘best interests’ of the said child. Section 8 (1) of the Children Act 2022 provides that:-
 - “(8) (1) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies
 - a. The best interests of the child shall be the priority consideration” [own emphasis]
27. This is a child who lost the only parent she knew at the tender age of two (2) years. The child’s maternal grandmother stepped up and took in the child whom she has been raising since the demise of the child’s mother. The grandmother told the court that due to her advanced age, she does not feel capable of providing for the needs of the child as she continues to grow and mature.
28. The Applicant who is the child’s Uncle is a blood relative. He has expressed a willingness to take over the care and upkeep of the child. Indeed PW2 confirmed that the Applicant has since the mother’s death been paying for the child’s education and has been sending money regularly to provide for the needs of the child.
29. I was able to interview the child. She was a lively girl who appeared clean and well cared for. The child confirmed that she knows the applicant as her uncle but she did not understand the meaning of ‘adoption’
30. This is a ‘kinship adoption’ as defined by Section 2 of the Act. The child will remain with the same family and will continue to have regular contact with her blood relatives.
31. I have perused the report prepared by the Guardian *ad litem*, the Adoption Agency and the Director Children’s Services. All three reports were positive and all recommend the adoption.
32. I am satisfied that this adoption does serve the best interest of the subject child. Accordingly I allow the application and hereby make the following orders:-
 - “1. The Applicant DNG is authorized to adopt the child known as Jolene Muusi
 2. Upon adoption the child will be known as Jolene Muusi.
 3. CWG is appointed as the legal guardian for the child.
 4. The Registrar-General is directed to make the relevant entry in the Adopted children’s Register.
 5. No order on costs.”

DATED IN NYERI THIS 25TH DAY OF JULY 2025.

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MAUREEN A. ODERO



JUDGE

