



**In re ZL (Minor) (Adoption Cause E001 of 2024)
[2025] KEHC 10933 (KLR) (23 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10933 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
ADOPTION CAUSE E001 OF 2024**

**S MBUNGI, J
JULY 23, 2025**

IN THE MATTER OF

LRC 1ST APPLICANT

BHO 2ND APPLICANT

JUDGMENT

1. Before the Court is the Originating Summons dated 23rd February 2024 by BHO and LRC, seeking to adopt the minor aforesaid, ZL.
2. The applicants, BHO and LRC state in their affidavit in support of their application that they are Kenyan and British citizens respectively and holder of National Identity Card no; 22XXXX and passport no; 51XXXX.
3. The applicants have made their applications as the court appointed guardians ad litem for all purposes and intents.
4. That they are a married couple having established a permanent home within Kakamega county.
5. That the child proposed for this adoption is a female child of African descent born on the 29th of August 2013 to MAM. The applicants have exhibited an affidavit sworn on 31/1/2023 by the minor's biological mother giving them express consent to the adoption of the minor by BHO and LRC.
6. The applicants submit that before they took up responsibilities, ZL was not going to school, was not eating well, and was not being clothed properly.
7. The Applicants further submit that they had enrolled the minor at Kijana Global innovation school where they were paying her school fees and all her basic needs, medical expenses and clothing were being provided for.
8. The applicants aver that currently the minor is being home schooled in preparation to enroll her to a British curriculum school in efforts to secure her education and future.



9. The applicants submit that they are good people in gainful employment with good intentions, vision and plans for the child's best interest today and in the future.
10. In support of their application the children's office under the directorate of children's service has supplied to the court a copy of its report dated 11/11/2024.
11. The report gives the particulars of the applicants as the prospective adoptive parents and also the particulars of the biological mother.
12. The report states that ZL was born to MAM who was 16 years and as such she had a troubled upbringing. Her father is not clearly known and family members are unwilling to disclose since it is suspected that she could be a product of an incestuous relationship.
13. The report also states that ZL was living under an unconducive environment lacking the basic necessities of life.
14. MAM, ZL's biological mother got married in 2015 leaving the child under the care of her grandfather and step grandmother. When the applicants came across ZL during community work, she was in bad health and malnourished .
15. The report also states that the applicants took care of the baby and provided good treatment and nutritional care for the baby, nurturing her in a conducive environment ,full of love and happiness befitting a young girl.
16. A home visit by the office also established that they have always treated ZL as their own child and accorded her super medical treatment and dedication.
17. The office also interviewed neighbours and also those who know the couple including local government leaders and it yielded a positive and favourable report with regards to their ability to provide good parenting.
18. The office also takes cognisance of the recommendations of the case committee of the little angels network which declared their child available for adoption, the consent from the biological mother to give the daughter up for adoption and the consent of other close relatives of the child.
19. Lastly the office submitted that whilst all other factors favoured the couple to adopt the child, the attention is drawn to section 186 (6) (f) of the [children act](#) 2022 on foreign applicants since the moratorium on inter-country and resident adoption issued on 26th November 2022 still exists. They also employed the Honourable court to have its discretion and consider the best interest of the child.
20. In further support of the Application, the Court has also been supplied with Affidavits and/or consents sworn by the minors' biological mother. The Court has also been supplied with, inter alia, copies of the minors' Birth Registration documents and also Birth Certificates, Certificates of Declaring a Child Free for Adoption and Identity Cards for the Applicants and their marriage certificate.
21. The Applicants have also produced a Certificate of Good Conduct issued by the national. The same indicates that there is no record of the Applicant having previously been charged with or convicted of any criminal offence or any other offence .



Determination

22. Regarding litigation concerning minors, Article 53(2) of the *Constitution* stipulates the over-arching principle which must apply whenever any decision concerning a child is to be made to be the “best interests” of the minor. It provides that:

“ A child’s best interests are of paramount importance in every matter concerning the child”

23. The said provision is echoed in Section 8(1) of the *Children’s Act*, No. 29 of 2022.

24. Regarding the law of adoption in Kenya, the relevant provisions are to be found in Part XIV of the *Children’s Act*, 2022 which provides

“ 183.

- (1) Subject to this Act, the High Court may, on an application made in the prescribed form, make an order, in this Act referred to as “adoption order”, authorising an applicant to adopt a child.
- 2) All proceedings under this Part shall be heard and determined in chambers, and the identity of the child and the applicants shall be kept confidential.
- (3) In this Act, adoption means local, kinship and foreign adoption
- (4) For the purposes of this Part—
 - (a) “kinship adoption” has the meaning assigned to it in section 2;
 - (b) “local adoption” means an adoption in relation to which—
 - (i) the child is resident in Kenya; and
 - (ii) the adopting parent or parents are Kenyan nationals resident in Kenya; and
 - (c) “ foreign adoption” means an adoption in relation to which —
 - (i) the adopting parent or parents are Kenyan nationals with dual citizenship;
 - (ii) the adopting parent or parents are foreign nationals whether or not resident in Kenya
 - (iii) the adopting parent or parents are not Kenyan nationals but are biologically related to the child; or



- (iv) the adopting parent or parents were once Kenyan nationals but have lost their nationality by operation of the law of the host country to which the prospective parent or parents have a nationality Power to make adoption orders. Means an adoption in

184.

- (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.

185.

- (1) Any child who is resident within Kenya may be adopted whether or not the child is a Kenyan citizen, or was born in Kenya.
- (2) Without prejudice to the generality of subsection (1), no Court may entertain an application for an adoption order in respect of a child unless—
 - (a) the child concerned has been in the continuous care and control of the applicant within Kenya for a period of three consecutive months preceding the filing of the application; and
 - (b) the application for an adoption order is supported by a report made by a duly registered adoption society recommending that an adoption order be made.
- (3) The report referred to in subsection (2)(b) shall contain the society's findings and recommendations in respect of the child and the applicant or applicants, as the case may be.
- (4) The following children shall be eligible for adoption —
 - (a) a child who is an orphan and has no guardian or caregiver able and willing to take care of the child
 - (b) a child who has been abandoned or whose parents' or guardian's whereabouts cannot be traced within a period of one year;
 - (c) children who are willingly offered for adoption by their biological parents in accordance with regulations made under this Part.

186.



- (1) The Court may make an adoption order on application by—
 - a) a sole applicant; or
 - (b) two spouses jointly.
- (2) The Court shall not make an adoption order in any case unless—
 - (a) the applicant has attained the age of twenty-five years, but is not above the age of sixty-five years; and
 - (b) 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.

- (8) Subject to the provisions of this section, an application for an adoption order in respect of a child shall be accompanied by written consents of the following persons
 - (a) a parent or guardian of the child, or any person who is liable by virtue of any order or agreement to contribute to the maintenance of the child;
 - (b) on the application of one of the spouses, the consent of the other spouse; and
 - (c) in the case of a child who has attained the age of ten years, the child himself or herself

25. The applicants wish to adopt the child as two spouses jointly as enshrined in section 186 (1) (b) of the [*Children's Act 2022*](#).
26. Having considered the pleadings, the reports filed by the adoption society and the Director of Children Services, as well as the oral evidence adduced in court, I am satisfied that the Applicants have met all the statutory requirements as provided under Sections 183 to 186 of the [*Children Act*](#).
27. However, The core challenge in this application is the existence of the Cabinet moratorium on inter-country adoptions, issued in November 2014. This moratorium effectively suspended inter-country adoptions from Kenya.
28. Where the legal terrain is unsettled and the Court is confronted with murky and intricate questions of law or policy such as in the matter before us, it becomes not only prudent but imperative that the Court anchors its reasoning on established jurisprudence and precedent.
29. In a similar case of [*re CV \(Baby\)*](#) [2021] KEHC 6542 (KLR), the High Court at Mombasa acknowledged the Cabinet moratorium on intercountry adoptions but distinguished the applicants' situation as a local adoption, citing their long-term residence in Kenya, marital stability, and the joint nature of the application. The Court emphasized that the moratorium was aimed at curbing



international adoptions by non-resident foreigners and did not apply to couples where one spouse is Kenyan and both reside permanently in Kenya

29. In the case of *In re LMG (Child)* [2023] KEHC 18227 (KLR) the court held that “Section 183 of the *Children Act* in defining foreign adoptions left out a scenario where one parent was a Kenyan national and another was a foreign national. The adoption was not intercountry. By operation of section 186(e), the Kenyan national could not apply for adoption as a sole male applicant. By dint of section 186 (6) the female applicant being a foreign national could not apply as a sole applicant. However, the joint application qualified them because the defects in the sole male applicant status were cured by the marriage. On the other hand, the marriage to the Kenyan national stabilized the adoption as a local adoption in spite of the female applicant being a foreign nation”
30. It is the Court’s considered view that the moratorium issued by the Cabinet Secretary constitutes a policy limitation put in place by statute grounded in administrative authority. While such pronouncements may guide executive action, they do not possess the force of law and cannot override constitutional or statutory provisions. In instances of legal uncertainty or conflict, the *Constitution* of Kenya must take precedence, followed by statute. This position is firmly anchored in Article 2(1) and (4) of the *Constitution*, which provides that

‘This Constitution is the supreme law of the Republic and binds all persons and all State organs at both levels of government’
31. The circumstances of this application mirror those considered by the Court in *In re LMG (Child)* [2023] KEHC 18227 (KLR). The Applicants have demonstrated marital stability, compliance with all procedural requirements, and have been assessed favourably by the relevant authorities. Furthermore, the Applicants have also demonstrated unwavering commitment to the child's welfare.
32. The Applicants have established a meaningful and affectionate bond with the child, ZL, having demonstrated consistent emotional support, financial capacity, and a stable domestic environment conducive to the child’s wellbeing. In light of the paramount consideration of the best interests of the child, as enshrined in Article 53(2) of the *Constitution* and reaffirmed under Section 4(3) of the *Children Act*, the Court is satisfied that granting the adoption would serve the welfare and long-term stability of the minor
33. The applicants have also jointly proposed Oscar Mulavu and Ruth Bilindi Namboi, Benson Handuli’s brother and sister in law respectively as the legal guardians of the child for all purposes and intents.

Final Orders

- a. The Applicants, LRC and BHO, are hereby authorized to adopt Baby ZL.
 - b. The Registrar-General is directed to make an entry in the Adopted Children Register accordingly.
 - c. The adoption society and the Director of Children Services shall monitor the welfare of the child for a period of one year and file a follow-up report.
 - d. OM and RBN are appointed as legal guardians.
33. It is so ordered.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 23 DAY OF JULY 2025

S. MBUNGI
JUDGE



In the presence of:-

Court Assistant-Elizabeth Angong'a

