



In re Application for Adoption of MA aka AW (Minor) (Adoption Cause E022 of 2024) [2025] KEHC 10144 (KLR) (14 July 2025) (Judgment)

Neutral citation: [2025] KEHC 10144 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
ADOPTION CAUSE E022 OF 2024
PN GICHOHI, J
JULY 14, 2025**

IN THE MATTER OF AN APPLICATION FOR ADOPTION OF MA AKA AW (MINOR)

IN THE MATTER OF

JWG APPLICANT

JUDGMENT

1. Under Articles 14(4) and 53(2) of the *Constitution*, Sections 4, 154, 156(1), 157, 158, 159, 162, 163, 170 of the *Children's Act* and Legal Notice No. 75 of 2002, the Applicant herein moved this by Originating summons dated 11th November, 2024 seeking for Orders that :-
 1. The consent of the biological parents of the minor herein be dispensed with since the child was found by a good Samaritan and efforts to trace the parents have since proved futile.
 2. The Applicant herein be authorized to adopt the said child and the child be henceforth called Angel Wangari.
 3. The Child be presumed to be a Kenya citizen having been found in Kenya at the time of birth.
 4. The Registrar-General does make the appropriate entries in the adopted Children register in respect of the minor and further the Registrar of Births and Deaths does issue a Birth Certificate in that respect thereof.
 5. The Guardian ad litem NNM be discharged and SNW and MNN be appointed as legal guardians of the minor herein in the event that the applicant herein is in any way incapacitated or in any way unable to discharge her parental obligations.
 6. The Court does issue such other Orders as may be necessary in the best interest of the child.
2. This application is based on the ground that the Applicant is ready and willing to assume full responsibility of the minor who she has raised since she was one year and one month old within which period the two have bonded well.



3. In her Supporting Affidavit sworn on even date, the Applicant expounds that that the minor was born on 16th December 2016 while abandoned by her biological mother on 18th December 2016 upon which the child was admitted at Mogra Rescue Centre on the same day and committed on 5th July 2017 at Nairobi Children’s Court.
4. She depones that she got married to one Peter Gachathi in year 2002 Kikuyu Customary Law but the two separated for lack of children. She therefore took this minor from Mogra Rescue Centre on 22nd January 2019 and since then, the minor has been in her continuous custody and control .
5. She states that the child is Kenyan by birth and of an African descent , has declared by KKPI Adoption Society as free for adoption, and that the child has not received or agreed to receive and no person has made or given or agreed to make to the Applicant payment or reward in consideration of the Adoption herein and therefore, she prays that she be allowed to adopt the minor.
6. Pursuant to an Order issued by this Court on 7th April 2025, a detailed Report dated 17th June, 2025 was prepared and filed by the County Children’s Co-Ordinator Mr. Pilot Khaemba, recommending the adoption of the subject child by the Applicant herein.
7. During hearing, all the three-witness reiterated their affidavits in support of this application.
8. The Guardian Ad Litem, NNM emphasised that she understood and continued to play her role in this matter. SN and his wife MNN who live in Mau Narok with the Applicant and indeed neighbours, explicitly demonstrated that they know the Applicant and the minor very well and that the Applicant has been living with and taking full care of the minor since the minor was only months old. That the child goes to school. Further, they understand their role as Legal Guardians of the minor.
9. The Applicant Juliah Wanjiku Gachathi reiterated that she has no biological child and that Peter Gachathi with who she lived on a come-we -stay basis for 7 years separated with her in year 2011 and remarried for reasons that she could not bear children.

Determination

10. This Court has considered the Originating Summons together with the Supporting Affidavit, the reports filed in regard to this adoption as well as all the evidence adduced in support thereto. The prerequisites for adoption are set out in section 184 (1) of the *Children’s Act* 2022 which provides:-
 - 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.”
11. Kenyans to Kenyans Peace Initiative (KKPI) Adoption Society, a registered adoption agency have annexed to their report, a certificate declaring the child herein free for adoption.
12. The material before Court shows that the subject child was born on 16th December , 2016 by unknown parents, and at unknown place but having been abandoned by an unknown person at Githurai 44. She was rescued by a good Samaritan and a report made at Kasarani Police Nairobi. She was about four days old. This Court saw the child in Court and her apparent age now is 7 years. She fondly referred to the Applicant as Mum and clearly, the two have a strong bond.



13. Regarding the suitability of the Applicant, Section 186 (2) of the *Children's Act* 2022 provides that: -
- “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.”
14. In this case, the Applicant is a Kenyan citizen as proved by the annexed copy of her National Identity Card which indicates that she was born in Nakuru County on 6th July 1986. The age of the Minor and the Applicants fit the age bracket stipulated under the *Children's Act*.
15. The Applicant is single and has not been blessed with any biological child. Having lived with the child since the said child was only months, she has demonstrated her parental responsibility over the child. There is no reason to interrupt that union that is fulfilling to both of them.
16. Regarding the prayer to declare the child a citizen of Kenya, Article 14 (4) of the *Constitution* 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.”
17. As noted above and from the material filed before this Court, this child is presumed born in Kenya and hence a Kenyan citizen.
18. On the prayer to dispense with consent of the child's biological parents, the material before this Court is that the child's biological parents remain unknown and further, no person has ever come forward to claim the child. In the circumstances, the right to consent is waived by virtue of Section 187(1) of the *Children's Act*.
19. From the totality of evidence on record, all the process towards this adoption has been followed thus satisfying this Court that the Originating Summons dated 11th November 2024 is merited.
20. In conclusion, the following Orders are hereby issued: -
1. JWG is hereby authorised to adopt the child MA aka AW.
 2. Upon adoption, the child shall henceforth be called AW.
 3. The child is declared to be a Kenyan citizen by birth and is entitled to all the rights and benefits pursuant thereto.
 4. The Registrar General is hereby directed to make the appropriate entry of AW in the Adopted Children's Register.
 5. The Registrar of Births and Deaths is hereby directed to issue a birth certificate reflecting the child's identity together with all relevant documents in respect to the child, Angel Wangari.
 6. SNW and MNN are hereby appointed as Legal Guardians of the child herein.
 7. The Guardian Ad Litem NNM be and is discharged.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 14TH DAY OF JULY, 2025.



PATRICIA GICHOHI

JUDGE

In the presence of:

Ms Nyambuto holding brief for Mrs. Gathecha for Applicant

Ruto, Court Assistant

