



REPUBLIC OF KENYA



**In re Baby MAI (A Child) (Adoption Cause E002 of 2025)
[2025] KEHC 10075 (KLR) (14 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10075 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
ADOPTION CAUSE E002 OF 2025
G MUTAI, J
JULY 14, 2025
IN THE MATTER OF THE CHILDREN ACT, 2022
AND
IN THE MATTER OF BABY MAI (A CHILD)
AND IN THE MATTER OF AN APPLICATION FOR ORDERS OF ADOPTION
OF BABY MAI (A CHILD) BY AIK AND SNK (THE JOINT APPLICANTS)**

JUDGMENT

1. The applicants herein moved this honourable court vide Originating Summons dated 21st January 2025, seeking the following orders:-
 - a. That this honourable court be pleased to authorise AIK and SNK to adopt a minor known as MAI;
 - b. That upon the making of the adoption order, AIK and SNK be appointed as guardians of the minor known as MAI;
 - c. That upon the making of the adoption order, this honourable court give directions that the Registrar General do make an entry recording the adoption in the Adopted Children Register; and
 - d. That the costs of this application be costs in the cause.
2. The application is supported by the averments in the statement in support of the application, sworn on 21st January 2025. The 1st applicant is a Kenyan citizen born in 1987, while the 2nd applicant is a Kenyan and British national born in 1989. They got married to each other in 2013 and are not blessed with children of their own. The motivation to adopt a baby has been ignited by the desire to have children, as they discovered after marriage that they were unable to have biological children of their own.



3. The 1st applicant is a businessman trading in the firm name and style of X Enterprises, while the 2nd applicant is an accountant in the said business. X Enterprises is situated within Mombasa County.
4. MAI was born on 4th March 2024, to AIK and AS. A is the brother of the 1st applicant. Alafiya is the wife of A. AIK and AS willingly gave up MAI for adoption. As Maryam, the niece of the 1st applicant, this adoption is a kinship adoption.
5. MAI was declared as being free for adoption by the Change Trust Adoption Society in the meeting of its Case Committee held on 28th May 2024. Consequently, a Certificate Serial No.XXXXXX was issued.
6. After the filing of these proceedings, KNS was on 7th April 2025 appointed as the guardian-ad-litem. Concomitant with the said appointment, this Court ordered the Director of Children Services, through the Children Department, Mombasa County, and the said guardian-ad-litem, to file their respective social inquiry reports within 30 days.
7. Preceding the hearing, the County Coordinator for Children Services in Mombasa County filed a report dated 1st July 2025, recommending the adoption. The guardian-ad-litem filed his report dated 25th April 2025, recommending the adoption.
8. During the hearing, the applicants urged the court to allow the application to enable them to adopt the baby. They stated that they understood the consequences of adoption and knew that the adoption order, once granted, is permanent.
9. Ms Louisa Kemuma, a Children Officer at the Regional Office of the Directorate of Children Services, testified that her office carried out a social enquiry. She recommended the adoption.
10. A representative of the Change Trust Adoption Society, Mr Ephraim Muteru Njama, testified that his organisation assessed the child and freed her for adoption. They issued a certificate to that effect.
11. KNS, the court-appointed guardian ad litem, testified that he visited the applicants and found that the child and the prospective adoptive parents had bonded well. Mr Shah recommended the adoption.
12. The parents of the child, AIK and AS, testified that they had willingly given up the child for adoption. They both confirmed that they knew that adoption is permanent. They further confirmed that they could not change their minds after the adoption order was issued.
13. I have considered the application herein, materials in support thereof and evidence by various witnesses and the issues that emerge for determination are: whether the baby is available for adoption, whether the joint applicants are fit to adopt the baby and most importantly, whether the adoption is in the best interests of the child.
14. The subject baby was born on 4th March 2024. Her parents are AIK and AS. The two parents gave up the child for adoption by the applicants. They stated during the hearing that their culture permits adoption.
15. On the baby's nationality, it is clear the baby was born in Old Town Mombasa and is currently staying with the applicants at Gold Stone Twin Towers, Kizingo, Mombasa County, all within the Republic of Kenya. Article 14(1) of *the Constitution* provides that:-

“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.”



The child herein was born in Kenya, and her biological parents are both Kenyans; thus, given this provision, the child is a Kenyan citizen by birth.

16. The child is above 6 weeks and below 18 years, which provision falls within the age bracket of any adoptive baby pursuant to Section 184(1) (b) of The [Children Act](#), 2022. Further, Section 185(1) of the [Children Act](#) provides that any child who is resident in Kenya, whether born in Kenya or not, is eligible for adoption. I have no doubt the child is fit for adoption.
17. Concerning the applicants' suitability, the 1st applicant is 38 years old, while the 2nd applicant is 36 years, old which places them under the age bracket of not less than 25 years or more than 65 years for an adoptive parent in compliance with Section 186(2) (a) of the [Children Act](#).
18. On their nationality, the 1st applicant is a Kenyan, while the 2nd applicant has dual citizenship (Kenyan and British), both are married to each other and reside in Kizingo, Mombasa County, within the Republic of Kenya. The child's father is a brother to the 1st applicant, which makes this adoption a kinship and a local adoption. I am guided by the case of re RNW (Minor) [2019] KEHC 1379 (KLR) where the court stated:-

“ Counsel has referred the court to some decided cases.

In Re: R.W.K. a.k.a. R.W.B. (minor) Adopt.75/2017 (2018 eKLR), the issue was whether the adoption was affected by the cabinet moratorium or inter country adoptions because whereas the baby was a niece to the 2nd applicant, the 2nd male applicant was a German national. J. Onyiego considered the application and held that the application was a kinship adoption and granted the order in the best interest of the child. The court did not specifically rule on whether it amounted to a domestic Adoption or it was international adoption.

In Adoption Cause 75/2017, J.N.A. by Zoo and C.A.N. J. Achode held that:

“According to the guidelines for alternative Family Care of Children in Kenya pg.153, kinship adoption is adoption by adopters who are kin or relatives within the extended family of the child. Kenyans living abroad and wishing to adopt a Kenyan child will adopt as Kenyans by way of domestic adoption. This is therefore considered to be a local adoption.”

Again in Adoption Cause 7/2018 in J. a.k.a. J.N. minor and P.W.K. and A.N.W. (1st and 2nd applicants), the applicants were said to be residents of Nyeri and domiciled in U.S.A. The adoption was in relation to a grandchild of the applicants and the court held that it was a kinship adoption and allowed it.

Having considered the above, authorities, I am persuaded to find that a kinship adoption is a domestic adoption to which this court has jurisdiction.”

19. The applicants have been described as financially stable, as the 1st applicant is a businessman and the 2nd applicant an accountant with various assets as indicated in the Director of Children Services Report. They are caring, loving and have no criminal record. Since the placement of the minor into their custody, the child has fully bonded with them. They also understand the consequences of adoption and that know that it is permanent. They appreciate the role of a parent and admits they will treat the baby like their biological child. It's my view that the applicants have met the requirements to adopt the baby.
20. On the question of whether the adoption is in the best interests of the baby, guidance can be drawn from Article 53(2) of [The Constitution](#) and section 8(1) and (2) of The [Children Act](#) 2022 both of



which state that the best interests of a child is the primary consideration when a court is considering a decision concerning a baby.

21. I am also guided by the decision of Nyakundi, J in the case of re B (Baby) [2018] KEHC 6114 (KLR) where he stated that:-

“The purpose of Kenya’s Constitution and Children’s Act is to protect and promote the welfare of Children by providing them with stable family units. The fundamental concern therefore in every adoption cause provision is of the best interest of that very child...

It is that family unit that *the constitution* contemplates under Article 45 which also has to take responsibilities in fulfilling the obligations enjoined in Article 53 of the same constitution.”

22. The child herein was surrendered willingly for adoption by her parents, AIK and AS. She is like any other child in need of parental care and guidance. She needs necessities like food, shelter, education and clothing. She has fully integrated with the joint applicants. It is obviously in the best interests of the child that this adoption application be allowed.

23. Although the joint applicants did not pray for the appointment of a legal guardian, I have opted to appoint the biological parents of the child as the legal guardians.

24. In my view, the application has merit. Consequently, I allow the Originating Summons and issue the following orders:-

- a. Baby MAI is hereby declared a Kenyan citizen by birth;
- b. AIK and SNK are hereby authorized to adopt Baby MAI;
- c. AIK and AS are hereby appointed the legal guardians of the minor and entrusted with the responsibility of taking care of MAI in the event the joint applicants die or are otherwise permanently unable to take care of her before she attains the age of majority;
- d. The Registrar General is hereby ordered to make an entry recording the adoption order herein and the date of birth of MAI as being 4th March 2024, in the Adopted Children Register as provided for by Section 201 of the *Children Act*, 2022; and
- e. The guardian-ad-litem, KNS, is hereby discharged;

25. I make no orders regarding costs as this is a non-contentious adoption matter.

26. Orders accordingly.

DATED AND SIGNED IN MOMBASA THIS 14TH DAY OF JULY 2025. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE

In the presence of:-

No appearance for the Applicant; and

Ms Kalekye – Court Assistant.

