



**In re JS alias BW (Baby) (Adoption Cause E009 of 2025)
[2025] KEHC 12912 (KLR) (Family) (19 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 12912 (KLR)

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

ADOPTION CAUSE E009 OF 2025

H NAMISI, J

SEPTEMBER 19, 2025

IN THE MATTER OF ADOPTION OF BABY JS ALIAS BW

IN THE MATTER OF

FMM 1ST APPLICANT

HMW 2ND APPLICANT

JUDGMENT

1. Before this Court is the Originating Summons dated 13 January 2025, Statement in support of the Application for an Adoption Order and Affidavit in support of the Application, seeking the following orders:
 - i. That the Applicants be and are hereby authorised to adopt Baby JS alias BW, a minor who is to be known as J.M.M. and the Registrar General be directed to enter this adoption into the Register of Adoptions;
 - ii. That GGM and GWM be appointed as the legal guardians of the child;
 - iii. That the child be presumed to have been born in Kenya.

The Child

2. The child (male) was born on 4 May 2014 at Thika Level 5 Hospital to one BW. He was later abandoned on 16 May 2014. The matter was reported to the Thika Police Station vide OB No. 05/06/06/2014. The child was temporarily placed at Mogra Children’s Home on 16 May 2014 for care and safety.
3. The child was committed to Mogra Children’s Home by the Children’s Court at Thika on 19 December 2014 under Protection and Care file No. 206 of 2014. He remained at the home unclaimed.



In their letter dated 10 March 2015, the Police indicated that their efforts to trace to the child's kin had been unsuccessful. The child was, therefore, rendered in need of an alternative family.

4. The child was declared free for adoption by the KKPI Adoption Society on 26 June 2024 and Certificate No. 0914 was issued, pursuant to section 187(2)(a) of the *Children Act*, 2022.
5. The child was later placed with the Applicants herein on 28 July 2024 for the mandatory bonding period prior to adoption. He has been in their care since then. The child is currently 11 years old, enrolled in Grade 5 at [Particulars Withheld] School, Nairobi.
6. During the hearing, the Court had the opportunity to interact with the child. The child appeared healthy, well groomed and happy. He expressed his joy at living with the Applicants and stated that they treat him well.

The Applicants

6. The Applicants are Kenyan citizens. They are a married couple, having formalised their union on 18 December 2020 under Kikuyu customary law. Unfortunately, their union has not been blessed with any biological children.
7. The Applicants reside in Donholm, Nairobi County. The 1st Applicant is about 70 years old. He works as a plumber. The 2nd Applicant is aged 65 years and operates a small-scale business. The couple has supported the child since he came into their lives.
8. The Applicants stated that they both profess Christianity and have no criminal records. They have a desire to adopt the child because so far, they have been unable to have a child of their own. Their desire is that the child herein may be their legacy.
9. The Applicants confirmed that they are financially capable of taking care of the child. The Applicants also confirmed that they understand the implications of an Adoption Order and that the same is not reversible.

The Adoption Application

10. I have considered the Summons, the evidence on record, as well as the various reports filed.
11. The duty of this Court is to analyse the material before it to determine whether the Applicants are suitable adoptive parents. The Applicants stated that they are committed Christians and that they intend to raise the child in a Christian development to ensure full spiritual development.
12. The Applicants presented copies of bank statements, land ownership documents, Police Clearance Certificates as well as recommendations from friends and family, all pursuant to the provisions of The Children (Adoption) Regulations, 2020. These demonstrate that the Applicants are financially, socially, physically and mentally fit to adopt the child.
13. Additionally, pursuant to section 186 of the *Children Act*, the Applicants provided letters of consent from G.G.M and G.W.M agreeing to be appointed as the legal guardians of the child in the event that anything untoward happens to the Applicants. G.W.M is a sister to the 1st Applicant, and married to G.G.M, with whom they have 3 children. The proposed legal guardians confirmed that they completely understand their role and what is expected of them.
14. The Applicants filed submissions in support of their Application herein.



Analysis and Determination

15. In deciding any matter involving a child, the Court is obligated to give priority to the best interests of the child. Section 8 of the *Children Act* provides:
 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 primary consideration;
 - b. The best interests of the child shall include, but shall not be limited to the considerations set out in the First Schedule;
 2. All judicial and administrative institutions, and all persons acting in the name of such institutions, when exercising any powers conferred under this Act or any other written law, shall treat the interests of the child as the first and paramount consideration to the extent that this is consistent with adopting a course of action calculated to:-
 - a. Safeguard and promote the rights and welfare of the child;
 - b. Conserve and promote the welfare of the child; and
 - c. Secure for the child such guidance and correction as is necessary for the welfare of the child, and in the public interest.
16. Section 186(2)(i) stipulates 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. (emphasis added). The only exception to this is provided in section 186(3), in instances where the applicant(s) are biologically related to the child.
17. On the issue of age, the Applicants submitted that the 2nd Applicant is still within the statutory limit for her to adopt the minor. Further, they argue that whereas the 1st Applicant is 70 years old, he met the Applicant in the year 1983, courted for 2 years and have been living together as husband and wife ever since. They decided to formalize their union on 18 December 2020. The Applicants have been in a stable marriage for a period of 42 years save that they have not been blessed with any children. The minor herein has been living under the same roof with both Applicants and he recognizes them as his parents. The Applicants submitted that they have a clear intention to protect, support, provide inheritance for and maintain the minor together as their own and both Applicants have been certified to be mentally and physically fit upon examination by doctors. In the premise, the Applicants contend that there are special circumstances, those being the will power to protect, support and provide inheritance, which warrant the Court to find in favor of the Applicants' prayers herein, despite the age of the 1st Applicant.
18. I have considered the Reports filed by the Adoption Agency dated 30 June 2025, the Guardian ad Litem dated 24 April 2025, both of which are positive and recommend the adoption.
19. The report by Director of Children Services dated 30 June 2025, albeit positive, was qualified. The report noted the child's desire not to return to institutional care. Further, there is a concern raised about the living conditions of the Applicants, who reside in a single-room dwelling. However, in a subsequent report dated 15 September 2025, it is indicated that the Applicants have since relocated to a 2-bedroom house, in which the child occupies one room, thus addressing the concerns about the privacy and general welfare of the growing boy.



20. In considering this Application, I take note of the provisions of section 186(5) of the Act, which states as follows:

The Court shall not make an adoption order in favour of the following persons unless the Court is satisfied on reasons to be stated on the record that there are special circumstances that warrant the making of the adoption order an applicant or joint applicants who has, or both have, attained the age of sixty-five years.

21. This Court is bound to consider the best interests of the child in every decision. It is a fact that the Applicants do not meet the age requirement since they are above the statutory age limit. That notwithstanding, it is important to consider the future of the child herein, who has spent most of his life in institutional care. At the advanced age of 11, it would be extremely difficult for him to find placement with any other family, thus condemning him to spending the rest of his childhood in an institution. The fact that he spent 11 years in such an institution, until such time as the Applicants herein took him in, is a clear indication of what the future portends for him if this adoption is not granted. In deed, these are special circumstances as envisaged under section 186(5). Every child deserves a family where they can feel safe and loved.

22. It is my view that this adoption will serve the best interests of the child. Not only will the adoption give the child a sense of belonging, but it will also give him the opportunity to grow up like every other child.

23. Pursuant to section 187(1)(a) of the Act, I hereby dispense with the consent of the biological parents since the child was found abandoned.

24. Accordingly, pursuant to section 186(5) of the *Children Act*, I allow the Summons and make the following orders:

- i. The Applicants, F.M.M. and H.M.W, are hereby authorised to adopt the child currently identified as Baby JSe alias BW, who will henceforth be renamed J.M.M.
- ii. G.G.M and G.W.M are appointed as the legal Guardians of the child;
- iii. The Guardian ad Litem is hereby discharged;
- iv. The Registrar-General is directed to make the appropriate entries in the Adopted Children's Register;

DATED AND DELIVERED AT NAIROBI THIS 19 DAY OF SEPTEMBER 2025

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

Applicants: Ms. Wairimu

Court Assistant: Lucy Mwangi

