



REPUBLIC OF KENYA



**In re MBM (Child) (Adoption Cause E007 of 2025)
[2025] KEHC 14302 (KLR) (16 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 14302 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
ADOPTION CAUSE E007 OF 2025
NIO ADAGI, J
SEPTEMBER 16, 2025
ADOPTION CAUSE NO. E007 OF 2025
IN THE MATTER OF: THE CHILDREN'S ACT NO. 29 OF 2022
AND
IN THE MATTER OF: BABY MBM (CHILD)
AND
IN THE MATTER OF: AN APPLICATION FOR ADOPTION ORDER BY LMM & FKM**

JUDGMENT

1. This judgment is in respect of the Exparte Originating Summons dated 12/03/2025 seeking an adoption order of the child herein.
2. The application seeks for orders that:
 - i. The Applicants be authorized to adopt the child baby MBM and upon making the adoption order, the child be known as MMM and her date of birth to be declared as 2nd August 2021.
 - ii. The Guardian ad litem JMM be discharged and EMM be appointed as legal guardian of the Child.
 - iii. The Child be declared a Kenyan Citizen by birth and as a consequence, be entitled to the rights and benefits of a Kenyan Citizen, including being issued with a Kenyan Passport whenever desired.
 - iv. The Registrar General be directed to make in the adopted Children's register appropriate entries in accordance with the particulars set out in the schedule.



3. The application is premised on the joint Statement and Supporting Affidavit of the Applicants sworn on 12/03/2025 and the various documents annexed to the application.
4. The Applicants are said to be husband and wife having solemnized their marriage on 11/08/2018.
5. The applicants have another boy child, (MMM now aged seven (7) years), whom they lawfully adopted in the year 2018.
6. That the child herein was declared free for adoption by the Case Committee of Kenya Children's Home Adoption Society on 18/09/2024. The Applicants aver that they were approved for placement on 20/04/2022 and have fostered the child since 30/10/2024 and have therefore met the requisite period of three months which have since lapsed thus allowing them to seek to adopt the child.
7. The Applicants further aver that, they are capable of assuming financial responsibilities of the child's medical care, education and general upkeep. That they have no interests adverse to those of the child.
8. The Applicants confirm that their family has fully supported them throughout the adoption process and they have no objection to the adoption order sought.

Analysis and Determination

9. The issue is whether the court should allow the adoption herein.
10. Section 183 of the Children's Act provides as follows: -
 - (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.
11. Pre-requisites for adoption are also stated under section 184 of the *Children Act*, 2022 as follows:



- (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.
 - (2) A person, including a parent, guardian or adoption society, shall not, prior to the making of an adoption order, entrust a child to the care, possession or control of any person not qualified to adopt a child in accordance with this Act.
 - (3) An applicant shall not preselect a prospective adoptive child except—
 - (a) in the case of kinship adoption;
 - (b) Where the applicant is a foster parent seeking to adopt a fostered child under the applicant's care.
 - (4) The Secretary shall monitor and submit reports to the courts on the wellbeing of a child who is subject to adoption proceedings.
 - (5) Any person who contravenes subsections (1) or (2) of this section commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding three years or to a fine not exceeding one million shillings, or to both.
12. Under Section 185, Children who may be adopted are stated as follows:
- (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 filling 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.
13. Under section 185, on who may apply to adopt a child, the following is the law:
- (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.
- (4) The Court shall not make an adoption order in favour of a sole male applicant, unless the applicant is a blood relative of the child.
- (5) 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.
- (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) is of unsound mind within the meaning of the *Mental Health Act* (Cap. 248);
 - (b) is incapable of exercising proper care and guardianship of a child;
 - (c) has been convicted by a Court of competent jurisdiction for any of the offences specified in the Third Schedule or similar offences;
 - (d) in the case of joint applicants, if the applicants are not married to each other;
 - (e) is a sole male applicant except where the applicant is a biological relative of the child; or
 - (f) is a foreign applicant except where the applicant is a biological relative of the child.
- (7) Notwithstanding anything contained in this section the Court may at its sole discretion decline to make an adoption order in favour of any person or persons if the Court is of the view that it is not in the best interests of the child to make the order.
- (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.
- (9) If the child referred to in subsection (8)(c) has a disability which restricts or impairs the child's ability to independently give his or her consent, the child shall be accorded such assistance, including the assistance of an intermediary, to facilitate his or her written consent.

14. In light of the above law, I have also perused all the documents filed in court on the consent and affidavit of fitness filed by the child's guardian ad litem.



15. The Report by the Mombasa Sub-County Children Officer dated 20/05/2025 was also availed in court certifying the Applicants as meeting the legal parameters to adopt the child herein.
16. The Report Kenya Children's Home Adoption society dated 12/06/2025 as well as the Report by the Guardian ad litem dated 30/04/2025 were also filed in court certifying the Applicants as suitable persons to adopt the child,
17. The application was heard orally in court and the Applicants, the child, the Children's Officer, Guardian ad litem, Officers from the Adoption Society and the Proposed legal Guardian were in attendance and testified save for the child who happily and properly answered the general light inquiries addressed to her by the court.
18. The Applicants in my view, as supported by evidence on record, have met all the legal requirements of adoption. No doubt, the Applicants are clear with intentions to protect, support, provide inheritance for and maintain the child as their own.
19. The Applicants already have one adopted child who is willing, excited and ready to welcome in the new sibling herein.
20. The recommendation report by the Children's Officer and the Adoption Society of Kenya too give the Applicants the go ahead to adopt the child herein. They describe the Applicants as committed to caring and maintaining the child and hold the view that the adoption herein sought will be in the child's best interest.
21. I am satisfied the Applicants and the child have bonded well. The child looked happy and jovial; she is in good hands. I am satisfied that the child will be in a good home.
22. The legal guardian, JMM confirmed that she signed the consent to act as a legal guardian and understood his role well.
19. The Kenya Children's Homes Adoption Homes confirmed that they issued certificates number 1019 confirming that the child in this matter is free for adoption. They also assessed the Applicants, found them suitable and duly counselled on adoption.
18. Having listened to the evidence and perused the requirements for adoption, I find that the Exparte Originating Summons dated 12th March 2025 is merited and as such I allow the same.

Disposition

20. In the upshot, I make the following orders:
 - i. The Applicants, LMM and FKM are hereby authorized to adopt the child currently identified as Baby MBM. (Names not to be published).
 - ii. The child shall be known as MMM (Name not to be published)
 - iii. The Registrar General is hereby directed to make the appropriate entry of MMM in the adopted Children's Register.
 - iv. The child MMM be presumed to be a Kenyan citizen born in Kenya on 2nd August 2021 and the Director of Immigration Services do issue MMM, the child herein with a Kenyan Passport whenever she will require the same.
 - v. EMM is hereby appointed as legal guardian of the child MMM



vi. The guardian ad litem JMM is hereby discharged.

vii. The file is closed.

JUDGMENT WRITTEN, DATED & SIGNED AT MACHAKOS THIS 16TH SEPTEMBER 2025

NOEL I. ADAGI

JUDGE

DELIVERED AT MACHAKOS THIS 16TH SEPTEMBER 2025

In the presence of:

..... for Applicants

Milly..... Court Assistant

