

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
CORAM: R. MWONGO, J.

ADOPTION CAUSE NO. E003 OF 2025

IN THE MATTER OF THE CHILDREN ACT CAP. 141 OF THE LAWS OF KENYA
IN THE MATTER OF THE ADOPTION OF BABY MI (A CHILD)

LMN.....SOLE FEMALE
APPLICANT

JUDGMENT

The Application

1. By originating summons dated 31st January 2025, the applicant is seeking the following orders from this court:
 - 1) That she be authorized to adopt Baby MI alias JM to be known as EK;
 - 2) That the applicant's sister EW be appointed as the legal guardian of the child in the event of death or incapacity of the applicant before he attains the age of majority;
 - 3) That the child be presumed to be a Kenyan citizen by birth;
 - 4) That the Registrar General be directed to enter the child into the Adopted Children's Register an entry recording the adoption;
2. The originating summons was supported by grounds that the applicant has met the legal requirements of adoption and she had sufficiently bonded with the child. She stated that it is in the best interest of the child that an adoption order be made. In her statement, the applicant stated that the biological mother of the child offered him up for adoption because she was unemployed and financially unstable. The adoption agency counselled her and informed her of the consequences of giving the child up for adoption and she understood what it meant. She gave her written consent releasing the child for adoption. The child was placed in the care of Imani Rehabilitation Agency and he was later declared free for adoption by the adoption agency.

3. The applicant has been fostering the child since 24th November 2023 to date. She is a widow who lost her husband just as the adoption agency had started assessing them for adoption purposes. She stated that she makes a decent living through farming activities and her dressmaking business in Ena. She is confident that her home and income are comfortable to support the child once an adoption order is made.

The Applicant's Background

4. The applicant is a 52-year-old widow. She lives and works as a farmer and dressmaker in Embu County. Her husband died after 20 years of marriage in June 2023 following an illness. During their marriage, they did not have any biological children and before his death, her husband supported the idea of adopting a child. When the child was given up for adoption at the age of 3 months old, his mother was at the time a secondary school student.
5. The applicant understands her responsibility as an adoptive parent. She makes a cumulative income of Kshs.60,000/= every month from her dressmaking business and farming and she believes that with this income, she can comfortably care for the child. A home visit revealed that the applicant lives in a 3 bedrooled house in Kwanjara and the house is serviced with the necessary utilities. It has a fence and is safe for upbringing of the child.
6. The applicant understands her obligations as an adoptive parent and she is confident that she can give the child a decent life upon adoption. It appeared that the child had bonded very well with the applicant and he is comfortable living with the applicant.

Background of the child

7. The child, a male, was given up for adoption by his birth mother who was still in secondary school and could not afford to take care of him due to financial instability. The birth mother stated that she also did not have a permanent place of abode and her family was not supportive. When consulted, her family was not keen on helping to raise the baby and that is when KKPI Adoption Society took up the matter and placed the child at Imani Children Home in April 2019. The child was later placed under the applicant's care where he has lived to date.

Guardian Ad Litem

8. The application by summons for adoption was accompanied by Chamber summons of even date seeking that WKK be appointed as Guardian *ad litem*. The application was allowed through an order of the court issued on 30th May 2025 and WKK was appointed Guardian *ad litem* in accordance with section 188(1) of the Children Act. The court also ordered that the secretary of Children’s services do file a home study report and the appointed Guardian *ad litem* file her report on MI.

Report by the Guardian *ad litem*

9. In accordance with section 188(2)(b) of the Children Act, the Guardian *ad litem* filed a confidential report dated 14th July 2025 in court. In it, she confirmed her understanding of the case and highly recommended the applicant as an adoptive parent to the child. She stated that she had visited the applicant’s home and had observed that the child and the applicant have bonded well and they have a good relationship. She vouched for the applicant as an adoptive parent since she applicant understands her responsibility and obligation in that regard.

Report by the Secretary, Children Services

10. Section 184(4) of the Children Act requires that the Office of the Secretary of Children Services shall monitor and submit reports to the courts on the wellbeing of a child who is subject to adoption proceedings. In compliance with this provision, a report dated 10th July 2025 was filed. The report stated that the applicant is financially stable and, following a home visit, it was established that she lives in a safe and comfortable home which is conducive for raising the child. The report also details that the applicant understands her obligations as an adoptive parent according to the Children Act. It was also noted that the child has bonded well with the applicant and that the applicant is committed to providing for the best interest of the child.

Suitability of the applicant for adoption

11. Section 186(1) and (2) of the Children Act provides for persons who may adopt a child, as follows:

***“(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.”

12. The applicant fulfills the conditions set in these provisions since she is a sole applicant who is within the allowable age bracket, and is 25 years older than the child. She is also a Kenyan citizen; therefore, this is a local adoption.

The Best interest of the child

13. ***A child's best interests are of paramount importance in every matter concerning the child.*** This is the dictate of Article 53(2) of the Constitution. Section 4(2) of the Children Act also elevates the best interest of the child and provides:
“Despite subsection (1), a provision in another legislation on children matters may prevail if it offers a greater benefit in law to a child.”

Report of the Child Adoption Society

14. Section 185(2) of the Children Act requires that an application for adoption be supported by a report of a duly registered adoption society. In this case, the KKPI Adoption Society filed a detailed report dated 11th July 2025 regarding Baby MI. It also availed a Certificate Declaring the child Free for Adoption in accordance with section 156(1) of the Children Act and the Adoption Regulations. These documents were presented in compliance with Section 187(2) and 185(4)(b) of the Children Act.
15. The circumstances of the case are that the child's biological mother gave her up for adoption. The KKPI Adoption Society followed due process and obtained the biological mother's consent in writing to enable adoption. The report recommended that it was in the best interest of the child to give him up for adoption.

Conclusion and Disposition

16. The documentation presented in court regarding the adoption of Baby MI qualifies his adoption by the applicant. The applicant also meets all the legal requirements necessary to enable her to adopt the child.

17. In this court's view, that it is in the best interest of the child that he be adopted by the applicant.
18. Accordingly, the prayers sought are granted as follows:
- 1) This adoption is deemed to be a local adoption;
 - 2) The applicant be and is hereby authorized to adopt Baby MI alias JM;
 - 3) Hence forth, Baby MI shall be known as EK;
 - 4) The Registrar General shall make the appropriate entry regarding the adoption of EK in the Adopted Children's Register;
 - 5) The Registrar shall issue to the applicant a certified copy of the entry pursuant to Order 4 herein in the Adopted Children Register, upon payment of the prescribed fee;
 - 6) The child EK is presumed to be a Kenyan citizen born in Kenya;
 - 7) The Guardian *ad litem* is hereby discharged; and
 - 8) EW is hereby appointed Legal guardian of the child EK.
19. Orders accordingly.

Delivered, dated and signed at Embu High Court this 15th day of October, 2025.

**R. MWONGO
JUDGE**

Delivered in the presence of:

1. Ms. Njagi holding brief for Ms. Thuku for Applicant
2. Lucy Muthoni Applicant
3. Francis Munyao - Court Assistant