



REPUBLIC OF KENYA



**In re Adoption of JCM (Minor) (Adoption Cause E007 of 2024)
[2025] KEHC 13895 (KLR) (2 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 13895 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
ADOPTION CAUSE E007 OF 2024
E OMINDE, J
OCTOBER 2, 2025
IN THE MATTER OF AN APPLICATION FOR ADOPTION OF JCM (MINOR)**

RULING

1. By way of Originating Summons dated 20th September 2024, the Applicant seeks the following orders;
 1. Spent
 2. Spent
 3. Spent
 4. That the Honourable Court be pleased to grant authorization to DKT and TAT alias TAN, the Applicants herein to adopt JCM.
 5. That the Registrar General do make an entry of the adoption order herein in the adopted children register in the prescribed form.
 6. That the court do issue such further orders as may be deemed fit in the interest of the child.
2. The Application is expressed to be brought under Sections 183, 186, 187, 188, 192 and 193 of the *Children's Act*, Article 53 of the *Constitution* of Kenya and Section 3A of the *Civil Procedure Act*. The application is premised on the grounds on the face of it and the contents of the affidavit sworn in support of the same.
3. In their affidavit, the applicants deposed that they are the legal guardians of the minor pursuant to the guardianship order issued on 18th October 2022 in Eldoret Misc. Children's case No. E040 of 2022. They annexed and marked as DKT1 a copy of the guardianship order. Further, that they are desirous of adopting the minor who has been declared free for adoption. They annexed a copy of the certificate declaring the same as DKT2a. they stated that they are legally married and annexed a copy of the marriage certificate as DKT3.
4. The deponents averred that the 1st applicant is a citizen of Kenya whereas the 2nd Applicant is a citizen of the United States of America, who has been staying in Kenya since 2003 and subsequently issued with



- a Dependant's Pass after getting married to the 1st Applicant in 2014 and has a Certificate of Permanent Residence and A Kenyan foreigner certificate of individual number xxxxxxxxx. They annexed copies of 1st Applicant's ID, passport, permanent residence and Foreign Certificate of the 2nd applicant marked as DKT 4a, 4b, 4c and 4d respectively. Further, that the minor herein was born on 26th April, 2022 and annexed a copy of the Birth Certificate marked as DKT 5. Additionally, they stated that the mother of the minor, Edna Jepleting, passed away on 27th April 2022. They annexed a copy of her death certificate marked as DKT 6
5. The deponents stated that the applicant is working for gain as a Chief Executive Officer at Living Room International, annexing and marking a copy of his verification of employment letter as DKT 7a and a copy of the payslip as DKT 7b. Further, that the 2nd Applicant works as a program development officer at Living room international, annexing and marking as DKT 8a – a copy of the employment letter and as DK8b a copy of the payroll summary. That they reside at [Particulars Withheld] village in Eldoret Town and have built their home on parcel No. Uasin Gishu/Ngenyiel Settlement Scheme/XXX.
 6. That the minor's father works as a police officer. They urged that the 1st Applicant is the paternal grandfather to the minor and attached and annexed the 1st Applicant's Birth Certificate, the minor's biological father's Birth Certificate and the Chiefs letter marked DKT 10a, 10b and 10c respectively. Further, that the minor's biological father has no objection in the applicants being appointed as adoptive parents and has consented to this application, annexing and marking as DKT 11 a copy of his consent.
 7. They stated that their five children who are above 14 years of age are fully supportive of their plans to adopt the minor into our family and have consented to this adoption, attaching and marking as DKT 12 copies of their consents. They deponed that they are willing and able to support the minor by providing him with a stable home, family environment, and other basic needs and desirous of being granted the adoption order. They urged the court to allow the application.
 8. The Applicants additionally swore a statement in support of the adoption order where they stated that they are legally married and of a Christian faith. They confirmed that they are a normal heterosexual couple and none of them has engaged in or aspired towards homosexual or lesbian tendencies. That the minor is of Kenyan nationality and shall be brought up in Christian faith. They stated that they had not received or agreed to receive any payment or reward in consideration of the adoption.
 9. The Guardians *ad litem*, EKT and EJT filed a report pursuant to their appointment on 4th December 2024. They stated that on the number of times they have visited the home, the child is cheerful and playing around the compound. Further, that the extended family has warmly welcomed the child to be part and parcel of the family. That the minor's maternal grandmother who is alive supports the applicants who have taken care of the child from when he was barely a day old. The applicants have bonded very well with the child and attend church go to the supermarket together and also the market to buy him clothes and toys. They further stated that the applicants have stable income from employment and farming which can enable them meet all the financial needs of the child. They urged that from their observations, they find the applicants suitable to be adoptive parents to the minor.
 10. Pursuant to the directions of the court, the Children's Officer filed a report on 19th May 2025. She conducted interviews with the guardians' *ad litem* and stated that they confirmed that they had made several visits to the applicants' home to assess the living environment and the care being provided to the child. She reported that the child appeared to be thriving in a nurturing and loving environment. They observed that the applicants had provided the child with emotional warmth, stability, and all the necessary provisions for his well-being. Both the guardians' *ad litem* unanimously expressed their full support for the adoption, stating that the applicants have demonstrated exemplary parental



commitment and capacity. They were confident that the adoption would serve the best interests of the child and recommended its approval without reservation.

11. She interviewed the child's maternal grandmother, LJ, a resident of Kombe Location in Chesumei Constituency, Nandi County. She is the mother of the late EJ, who tragically passed away on 26th April 2022 due to complications arising shortly after childbirth. Following this unfortunate event, the family held consultations and reached a mutual agreement regarding the future care of the new-born. Given the circumstances and the need to ensure the child's well-being and stability, the family decided that the applicants, DKT and EJT, would assume the responsibility of raising the child. A significant factor that influenced this decision was the occupation of the child's biological father who serves as a police officer and is subject to frequent transfers due to the nature of his work. This made it difficult for him to provide consistent care and a stable home environment for the child. That furthermore, the first applicant, is not only a paternal uncle to the biological father but also played a crucial parental role in his upbringing, since the child's biological father was orphaned at an early age. The maternal grandmother recommended the applicants for adoption expressing confidence in their ability to continue providing the child with a loving and supportive upbringing.
12. The officer interviewed the child's biological father – KKN. He stated that the proposed kinship adoption has received his full support. He stated that he is currently serving as a police officer stationed in Naivasha. He lost his wife on 7th April 2022 and has since been raising the subject child as a single parent. Despite the emotional and practical challenges following his wife's death, he has remained closely connected to his extended family and continues to actively participate in family matters. He expressed deep appreciation for the applicants, noting that they played a pivotal role in raising him and his sister following the loss of their parents at an early age. He commended the applicants for their unwavering support, care, and guidance throughout his formative years, describing them as nurturing and morally upright individuals who significantly shaped his values.
13. However, he acknowledged that he has been struggling with alcoholism, which has adversely affected his capacity to provide adequate care and support for the child. Recognizing his current limitations and prioritizing the child's welfare, he has voluntarily and knowingly given his consent to the adoption through Little Angels Network. He confirmed his full understanding of the implications of the adoption and expressed confidence in the applicants' ability to provide a stable and loving home. He emphasized that the adoption is in the best interest of the child. Additionally, he disclosed that he has a nine-year-old daughter from a previous relationship who is currently under the care and custody of his paternal aunt. He reiterated that he was unable to provide stable consistent care for the child and supported the adoption of the minor.
14. The children's officer conducted a home visit and environment assessment and observed that the home provides a conducive environment for the holistic development of the child mentally, emotionally, physically, and socially. Additionally, on financial capability, the officer was satisfied that the applicants possess the means to provide a stable, secure, and well-resourced environment for the child's growth and development. She recommended that the adoption be allowed.

Analysis & Determination

15. Article 53(2) of the *Constitution* stipulates the over-arching principle which must apply whenever any decision concerning a child is to be made must be the "best interests" of the minor. It provides that:

“ A child's best interests are of paramount importance in every matter concerning the child”



16. Section 183 of the *Children's Act* provides as follows on the powers of the court to make adoptive orders;

Power to make adoption orders.

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.

17. Section 2 of the *Act* defines "kinship adoption" as the adoption of a child by a person who is a relative of the child.

18. The pre requisites for adoption are set out at section 184 of the *Children's Act* 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*.

19. Section 185 of the *Act* states as follows on children who may be adopted;

185 (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 filing 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.
20. Section 186 (1)(a) gives the relevant provision as to who may apply to adopt a child. It provides;
- (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.

21. Section 201 of the *Children's Act* provides;

- (1) Every adoption order made by the Court shall contain a direction to the Registrar to make an entry in the Adopted Children Register in the prescribed form.
- (2) ...
- (3) ...
- (4) ...
- (5) Where an adoption order is made by the Court, the Court shall direct that the order be lodged with the Registrar, and on receipt of the order, the Registrar shall comply with the directions contained in the order with regard to—
 - (a) marking an entry in the Register of Births with the word "Adopted"; and
 - (b) making the appropriate entry in the Adopted Children Register.

22. I have considered the Application by the Applicants as against the requirements as hereinabove summarised and I am of the finding that the same have all been met. In this regard, I find merit in the Application and the same is accordingly allowed in its entirety as prayed with costs in the cause.

READ DATED AND SIGNED AT ITEN ON 2ND OCTOBER 2025

E. OMINDE

JUDGE

