



**In re MWK (Child) (Adoption Cause E167 of 2025)  
[2025] KEHC 14810 (KLR) (Family) (23 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 14810 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
ADOPTION CAUSE E167 OF 2025  
H NAMISI, J  
OCTOBER 23, 2025  
IN THE MATTER OF ADOPTION OF BABY M.W.K**

**IN THE MATTER OF**

**AMK ..... 1<sup>ST</sup> APPLICANT**

**GKK ..... 2<sup>ND</sup> APPLICANT**

**JUDGMENT**

1. I wish to borrow the words of Hon. Lenaola, J in the case JLN & 2 others v Director of Children Services & 2 others; Kenya National Human Rights Commission & another (Interested Parties) (Petition 78 of 2014) [2014] KEHC 7491 (KLR). Surrogacy is not a hypothetical issue any more. It is real and many Kenyans are turning to surrogacy as an alternative to being parents especially those who cannot not for medical reasons have their own children. Unfortunately, due to the lack of a legal regime to regulate surrogacy arrangements, parents find themselves in a situation such as the one herein. They are forced to adopt their own biological children.
2. Before this Court is amended Originating Summons dated 28 August 2025, by which the Applicants seek the following orders:
  - i. That the Applicants AMK and GKK be authorised to adopt the child known as M.W.K;
  - ii. That upon adoption the child shall be known as M.W.K;
  - iii. That the Director of Immigration be authorised to issue the child with a Kenyan passport;
  - iv. That the Registrar General to make the relevant entry in the Adopted Children’s Register;
  - v. That the child be presumed to be a Kenyan citizen by birth;
  - vi. That the appointment of a guardian ad litem be dispensed with;



- vii. That the Registrar of Births and Deaths to issue a new Birth Certificate to the minor bearing the name AMK as the mother and GKK as the father to the minor.

### **The Child**

3. The child herein was born on 12 February 2025. She is the biological child of the 2<sup>nd</sup> Applicant. The child was born out of gestational surrogacy where the gametes of the 2<sup>nd</sup> Applicant were fused with the gametes of a donor and implanted into the womb of the surrogate. Upon delivery, the child was handed over the Applicants in accordance with the surrogacy agreement and they took over parental responsibility over the child.

### **The Applicants**

4. The Applicants are a couple. They got married in November 2011 in Nakuru County. The Applicants relocated to the USA shortly and have resided in there to date. The Applicants went through a long and agonizing journey seeking to have a child of their own. When this did not yield any fruit, they opted for surrogacy as a solution. The 2<sup>nd</sup> Applicant is the biological father of the child as evidenced by the annexed Birth Certificate as well as the results of the DNA test results dated 10 April 2025. The Applicants now wish to adopt the subject child in order to regularize her position as a legitimate and valued member of their family.
5. Both Applicants confirmed that they are aware of the legal implications of an adoption order. They undertake to accord the child all rights due to a biological child, including the right to inherit. Additionally, the Applicants enjoy the full support of their extended family in this decision.

### **The Surrogate**

6. The Surrogate mother, R.A.O, appeared before the Court and confirmed that she has voluntarily and unequivocally agreed to vest the guardianship, custody, care and control of the child to the Applicants. She filed a consent dated 23 June 2025 relinquishing all her rights to the child.

### **Analysis and Determination**

7. The legal prerequisites for adoption are set in section 184(1) of the *Children Act*, which provides as follows:  
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.
8. The child was born on 12 February 2025. Annexed to the Application is the child's certificate of birth. The child is currently aged eight months old and is well above the six (6) week age limit, provided in law.
9. KKPI Adoption Society, a registered adoption agency, filed a report dated 28 May 2025. The child was also declared free for adoption vide certificate serial number 962. I, therefore, find that all legal prerequisites for adoption have been met in this case.
10. The duty of this Court is to analyze the evidence on record to determine whether the applicants are suitable adoptive parents. Both Applicants are citizens of Kenya and the United States of America. The Applicants presented copies of passport and Police Clearance Certificates, pursuant to the provisions of The Children (Adoption) Regulations, 2020. The various Reports filed disclose that the Applicants are financially, socially, physically and mentally fit to adopt the child.



11. The Applicants indicated to the Court that the respective families have already accepted the child and recognize her as a member of the family. They are aware of the circumstances of the conception and birth of the subject child. Both families support the intention of the Applicants to adopt the child and have wholeheartedly welcomed the child into the family.
12. The Applicants have appointed Elizabeth Wairimu Njoroge as the legal guardian for the child. The said legal guardian has signed a consent dated 23 June 2025, indicating his willingness to act as legal guardian for the child.
13. All in all, I am satisfied that the Applicants are suitable adoptive parents.
14. Article 14 of *the Constitution* of Kenya, 2010 deals with the question of Citizenship. Article 14(1) provides as follows:-

“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.”
15. In deciding upon any matter involving a child, the Court is obligated to give priority to the best interests of the child, pursuant to section 8 of the *Children Act*.
16. This adoption is essentially a kinship adoption. The 2<sup>nd</sup> Applicant is the biological father of the child. The 1<sup>st</sup> Applicant is the legal wife of the child’s father. The child has lived with the Applicants from the time she was born.
17. I have perused the reports prepared by the Adoption Agency dated 28 May 2025, the Guardian ad litem dated 6 August 2025, as well as the Director of Children’s Services dated 9 September 2025. All three reports are positive and all recommend adoption.
18. At the hearing, the Court was able to see the child, who lay peacefully in bed. She appeared healthy and well cared for. I have no doubt that the child has bonded with the Applicants, especially because they are the only parents she’s ever known.
19. In the matter Re the matter of Baby TDL [2014] eKLR, Hon. Justice Musyoka held as follows:

“I have noted the ethical concerns raised by the director of children’s services in his report. I have taken note that he has recommended the proposed adoption, save that he has misgivings about certain matters on a purely moral standpoint. Legally, surrogacy arrangements are valid and have been upheld in other jurisdictions. The Kenyan state has been slow in passing legislation to deal with surrogacy arrangements, that, however, should not, in my view, affect the legality of such arrangements so long as they are entered into freely by consenting adults and are in the best interests of the child the subject of the arrangements. In my view, the child in this case will not be prejudiced in any way, and the present arrangements are in his best interests.”
20. Similarly, in this instance, the adoption is in the best interest of the child.
21. In the premise, I am satisfied that this adoption serves the best interests of the child. Accordingly, I do allow this Application and make the following orders:
  - i. A.M.K and G.K.K. are hereby authorized to adopt the child known as M.W.K;
  - ii. E.W.N is hereby appointed as the legal guardian 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;
- v. The Director of Immigration is directed to issue the child with a Kenyan passport;
- vi. The Registrar of Births and Deaths is directed to issue a new Certificate of Birth to the child bearing the name A.M.K as the mother and G.K.K. as the father.

**DATED AND DELIVERED AT NAIROBI THIS 23 DAY OF OCTOBER 2025.**

**HELENE R. NAMISI**

**JUDGE OF THE HIGH COURT**

Delivered on virtual platform in the presence of:

For Applicants: Ms. Opiyo

Court Assistant: Lucy Mwangi

