



**In re Application for the Adoption of Baby DWK (Adoption Cause E004 of 2025) [2025] KEHC 16146 (KLR) (6 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 16146 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
ADOPTION CAUSE E004 OF 2025**

**AC BETT, J**

**NOVEMBER 6, 2025**

**IN THE MATTER OF AN APPLICATION FOR THE ADOPTION OF BABY D.W.K.**

**IN THE MATTER OF**

**JKM ..... APPLICANT**

**JUDGMENT**

1. By an Originating Summons dated 5<sup>th</sup> March 2025, the Applicant, J.K.M., seeks the following orders:-
  - a. That the consent of the biological parents of Baby D.W.K. be and is hereby dispensed with since he was rescued as an abandoned child on the streets of Kakamega.
  - b. That the Applicant be and is hereby authorized to adopt D.W.K.
  - c. That the Registrar-General do make the appropriate entries in the Adopted Children's Register in respect of D.W.K.
  - d. That the Court does issue such other orders as may be necessary in the best interest of the child.
  
2. The Applicant is a Kenyan married to PS who is an Italian, and she works with the United Nations as a [Particulars Withheld] Officer currently based in [Particulars Withheld]. They got married in 2018. The Applicant has five children from her previous relationship, all of whom are now adults. The Applicant produced a Marriage Certificate, and an affidavit of consent to the adoption executed by her husband, an affidavit executed by the legal guardians and a copy of a declaration report made by KPPI, as well as a copy of a certificate to declare the child free for adoption. The Applicant also produced a certificate of good conduct, her bank statements, a copy of an application to foster a child, a copy of a form of undertaking to foster the child, as well as a certificate of registration issued to her as a foster parent on 17<sup>th</sup> October 2019. Alongside the aforesaid documents, she has produced certificate of good conduct and avers that she has the ability to take care of the child.



3. The child is stated to have been born on 19<sup>th</sup> February 2012, and both parents are unknown. He was found abandoned in the streets of Kakamega town in 2015, and was rescued by a good Samaritan named FM, who reported the incident at Makunga Police Station. She was allowed to have temporary care and custody of the child by the police, and took care of the child until the year 2019, when she decided to return the child to Makunga Police Station on account of what she reported to be deviant behaviour that the child had started exhibiting.
4. The child was temporarily placed at Kakamega Juvenile Remand home pending the finding of a suitable institution to accommodate him and was eventually placed at Divine Providence Children's Home as a child in need of care and protection via P & C 1 of 2019 through Kakamega Law Courts.
5. While the Applicant was on a social responsibility visit at Divine Providence Children's Home, she and her husband were attracted to the child after hearing his story. They volunteered to stay with him under a foster care arrangement through the Children's office and the Manager of the Home. They took in the child under a foster care arrangement. They enrolled him in school and have been taking care of him to date.
6. The child was later declared free for adoption vide KKPI Adoption Society Certificate of Declaring a Child Free for Adoption number 0941, dated 8<sup>th</sup> April 2025.
7. The Applicant filed a Chamber Summons dated 5<sup>th</sup> March 2025, which was filed contemporaneously with the Originating Summons in which she sought an order that Mugaiza Kahombi Jennifer be appointed as Guardian ad Litem of the baby during the hearing of the adoption proceedings, and that the Director of the Children's Services be directed to conduct investigations as to her suitability to adopt baby DWK.
8. On the 8<sup>th</sup> May 2025, the court considered the Chamber Summons application and interviewed the prospective Guardian ad Litem and being satisfied that she understood her responsibility as a Guardian ad Litem, appointed her as such. The court ordered her to prepare a report on the intended adoption within 45 days. The Director of Children's Services was also ordered to investigate the Applicant and file a report regarding her fitness and suitability to adopt their child.
9. The matter proceeded to hearing on the 9<sup>th</sup> October 2025 after both reports had been filed. Five witnesses testified. PW1 was the Guardian ad Litem who confirmed that she made several visits to the Applicant's home and filed her report on 19<sup>th</sup> June 2025. She filed a report in which she said that she has been visiting the Applicant and the child severally and has established that they relate well. She said that, having observed their relationship, she was satisfied that the Applicant is suitable to adopt the child.
10. PW2 was CM, the firstborn son of the Applicant. He averred that he understands the duties of a Legal Guardian and stated that he was ready and willing to take it up whenever it is necessary. He said that he is 43 years old.
11. PW3 was Jacqueline Wambui, a Social Worker with KKPI Adoption Society. She testified that the child was declared free for adoption, and a certificate stating the child was free for adoption was prepared, and a copy was handed over to the Applicant. The certificate is number 0941. She averred that the certificate declaring the child free was filed together with the adoption bundle.
12. PW4 was the child who stated that his name is DWK, aged 13 years old and a student at [Particulars Withheld] School where he is in Grade 6. He came to court with his Aunt V as he stated that his mother was currently outside the country. He said that he is aware that JKM is not his biological mother but he has lived with her since he was in Grade 1. He stated that he knows several of the Applicant's family



members including her husband PS. According to him, he has a good relationship with the family and would wish the relationship to be made permanent as he is treated well by the Applicant, her husband and the rest of the family. The child said that he is aware that once he is adopted by the Applicant, he will be her child and will be required to discharge his responsibilities as a child which is to be obedient, attend school, help out in house chores and attend their church which is the Roman Catholic Church.

13. The last witness was the Applicant herself. She affirmed that she is aware that once the adoption process is completed, there is no going back. She also said that she knows that the adopted child would automatically become her dependant. She averred that her husband who has consented to the adoption has been helping her support the child and normally comes home to spend time with the children.
14. The Director of Children's Services through the Sub-county Children's office, Stephen Mule, produced a report dated 7<sup>th</sup> July 2025 in which he stated that he had PS has consented to the process of alternative family care, and that the child has been declared free for adoption. He stated that this being a local adoption, the Director of the Children's Services has no objection to Applicant being appointed as the adoptive parent to DWK, having met the criteria of the relevant sections of the Children's Act, and in the best interest of the child.

established that the child needs care and protection under the Children's Act, and having been placed at the Divine Providence Children's Home in 2019, has been under the temporary care and custody of the Applicant since 2019, and the Applicant has been providing all his basic needs. According to him, the Applicant and the child have developed a strong familial attachment and bond as observed during the home visit. He confirmed that the Applicant's husband

15. Considering that the child was found abandoned within Kakamega town and rescued by a good Samaritan, and that to date no man or woman has come forward to claim him, the need for the biological parents' consent pursuant to Section 186 (8), and Section 187 of the *Children Act* is dispensed with.
16. The child is presumed to be a Kenyan because the child was found within the Kenyan territory. He was found in Kakamega, Kenya, when he was under eight years old. Pursuant to Article 14 (4) of the *Constitution* of Kenya, A child who is under eight years whose nationality and parents are unknown is presumed to be a Kenyan citizen. In the circumstances, it is deemed that this child is a Kenyan citizen by birth.
17. Concerning the Applicant's suitability, the Applicant is a Kenyan citizen by birth, and although she is married to an Italian, there is no indication that she has renounced her citizenship. The Applicant is aged 58 years and therefore falls within the age envisaged by Section 186 of the *Children Act*. She is of sound mind, an employee with the United Nations and has a permanent home within Kakamega. She says that she intends to have her employer enlist her child as a beneficiary before she retires. She avers that she has the means to take care of the child. Both the Applicant and her husband have no criminal records.
18. The Applicant's biological son, has consented to be the Legal Guardian of the child, signifying an acceptance of the child within the family, and since the child was placed in their custody, the child has fully bonded with them.
19. The Applicant has averred that she has been taking care of the child, has a home, and has maintained him for more than five years, and that she has not received any payments or rewards in consideration of the adoption of the child.



20. From the documents filed in court, the Applicant proposes to bring up the child by instilling Christian values and discipline in him while nurturing him with love and care. They also intend to procure an education policy to safeguard his education, so that he may learn to the highest level he aspires to reach.
21. The report from KKPI Adoption Society is that the Applicant and her husband underwent pre-adoption counseling and were finally determined suitable for adoption. The report is therefore favourable.
22. I have considered the application and I find that the proposed adoption is in the best interests of the child as contemplated by Article 53 of the *Constitution* which states:-

- “(1) Every child has the right—
- (a) to a name and nationality from birth;
  - (b) to free and compulsory basic education;
  - (c) to basic nutrition, shelter and health care;
  - (d) to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labour;
  - (e) to parental care and protection, which includes equal responsibility of the mother and father to provide for the child, whether they are married to each other or not; and
  - (f) not to be detained, except as a measure of last resort, and when detained, to be held—
    - (i) for the shortest appropriate period of time; and
    - (ii) separate from adults and in conditions that take account of the child’s sex and age.
- (2) A child’s best interests are of paramount importance in every matter concerning the child.”

23. The fundamental concern in adoption cause is in the best interest of the child. (See the case of *In re M.A. Baby* [2021] KEHC 2448 (KLR)). There is no doubt whatsoever that the child needs parental care and attention. He also needs to be guaranteed the necessities of life, which he has so far derived by staying under the foster care of the Applicant and her husband. In the circumstances, I find that the proposed adoption would be in the best interest of the child. In the circumstances, I find that the Originating Summons has merit and I therefore issue the following orders:-
  - a. That the consent of the biological parents of baby DWK is hereby dispensed with.
  - b. That the Applicant be and is hereby authorized to adopt baby DWK.
  - c. The Registrar General is directed to make the appropriate entries recording the adoption order made herein in the Adopted Children’s Register.
  - d. That the Guardian ad Litem be and is hereby discharged.
  - e. That CM be and is hereby appointed Legal Guardian of the child.



**DATED, SIGNED, AND DELIVERED AT KAKAMEGA, THIS 6<sup>TH</sup> DAY OF NOVEMBER 2025.**

**A. C. BETT**

**JUDGE**

In the presence of:

Ms. Mukolwe holding brief for Mr. Wasilwa for the Applicant

Child D.W.K. present in Court

Court Assistant: Polycap

