



**In re V alias IAY alias SAY (Minor) (Adoption Cause E215 of 2025)
[2026] KEHC 52 (KLR) (Family) (16 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 52 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY**

ADOPTION CAUSE E215 OF 2025

H NAMISI, J

JANUARY 16, 2026

IN THE MATTER OF ADOPTION OF BABYV ALIAS IAY ALIAS SAY

IN THE MATTER OF

MAK 1ST APPLICANT

NBK 2ND APPLICANT

JUDGMENT

1. This matter comes before this Court by way of an undated Originating Summons brought pursuant to the provisions of sections 183, 184, 185, 186, 194, 200 and 201 of the *Children Act*. The Applicants seek the intervention of this Court to grant them full parental rights and responsibilities over a female minor, effectively severing the legal ties between the child and her biological parents, and creating a new, permanent legal parent-child relationship between the Applicants and the child.
2. Specifically, the Applicants pray for the following orders:
 - i. That the Applicants be authorised to adopt Baby V Alias IAY Alias SAY, a child who upon the adoption is to be known as MBK and the Registrar General be directed to enter this adoption into the Register of Adoptions;
 - ii. That NUR be appointed as the legal guardian of the child;
 - iii. That the child be presumed to be a Kenyan citizen born on 27 September 2024 at Aga Khan Hospital, Nairobi, in the Republic of Kenya.
3. Adoption is a profound legal process. It is not merely a bureaucratic reclassification of a child's status but a transformative judicial act that alters the life trajectory of a human being. It involves the permanent transfer of parental rights and responsibilities from biological parents to adoptive parents. As such, the Court acts as the ultimate guardian of the child's welfare, exercising its *parens patriae*



jurisdiction to ensure that the process is not only procedurally sound but substantively just and in the best interests of the child.

4. While appearing on its face as a standard adoption application, the factual substratum of this case presents a complex intersection of bioethics, assisted reproductive technology (IVF), and family law. The child in question was born following an IVF procedure to parents of Ethiopian origin but was subsequently discovered—via DNA testing—to share no genetic lineage with the birth mother, presenting a phenotype (Asian/Indian) distinct from the birth parents. This IVF mix-up led to the voluntary relinquishment of the child by the birth parents, invoking the jurisdiction of this Court to determine legal parentage, the validity of Parent Offer in cases of genetic mismatch, and the ultimate best interests of a child caught in a medical and identity limbo.

The Applicants

5. The 1st Applicant is an adult male of dual nationality, Kenyan and British, born in October 1981. He is currently 43 years of age. He holds a Higher National Diploma in Computing. His professional trajectory spans over 2 decades in the United Kingdom within the automotive spare parts industry before his relocation to Kenya in 2016. He is currently employed as an IT and Marketing Manager at [Particulars Withheld] Auto Spares Limited in Nairobi, a position he has held since 2018. The 1st Applicant articulated his deep desire to experience fatherhood, a yearning intensified by the couple's inability to conceive biologically despite a decade-long union.
6. The 2nd Applicant is an adult female Kenyan citizen, born in December 1985 in Nairobi. She is 39 years old. She is a highly qualified professional, holding a Master's Degree in Human Resource Management and Training and is currently pursuing a PhD in Social Transformation. She operates her own consultancy firm, [Particulars Withheld] Ltd.
7. The 2nd Applicant's personal history is marked by resilience. Following the separation and divorce of her parents, when she was 13, she assumed significant caregiving responsibilities for her three younger siblings. This early exposure to mothering shaped her affinity for children. She described the child herein as a bundle of joy and stated, "I was born to be a mother... it would be unjust not to be able to pass that on to my children".
8. The Applicants contracted a marriage under Islamic Law in December 2015. They have cohabited for 10 years. The marriage is described in the social inquiry reports as stable, loving, and founded on friendship. Both Applicants have expressly addressed the issue of divorce during counselling, affirming their commitment to the permanence of the family unit they intend to build with the child.

The Child

9. The child was born on 27 September 2024 at Aga Khan Hospital, Nairobi. The birth occurred within the marriage of AYEI and ZMH, a couple of Ethiopian nationality. The birth parents, struggling with natural conception, sought medical intervention in India, where they underwent an In Vitro Fertilization (IVF) procedure. The pregnancy was carried to term. However, as the child (and her twin sister, subject to a separate cause) developed, a stark phenotypic discrepancy emerged. The parents, who are of African (Ethiopian) descent, noted that the children appeared to be of Asian/Indian descent.
10. Distressed by the physical differences and facing questions from their community, the birth parents commissioned a DNA paternity/maternity test. The results from Endeavor DNA Laboratories dated 1 November 2024, were definitive. The report excluded ZMH as the biological mother, citing a 0% probability of maternity based on non-matching alleles at multiple STR loci. This scientific evidence



points to a critical error during the IVF process—likely an embryo mix-up—whereby the birth mother was implanted with embryos completely unrelated to her or her husband.

11. Faced with the reality that the children were genetically unrelated to them and fearing discrimination and ridicule within their community due to the racial difference, the birth parents made the agonizing decision to relinquish the children. This was not a case of classic abandonment where a child is left in a public place; rather, it was a structured Parent Offer facilitated by the Change Trust Adoption Society.
12. The birth mother signed a formal consent on 30 January 2025. She specifically expressed a wish for the children to be raised in a Muslim family, ideally of Asian background, to ensure their cultural and physical integration.
13. The child was committed to the House of Charity Children’s Home on 31 January 2025 under a Care and Protection Order (Case No. MCP&CCOXXXX/2025). Subsequently, on 27 February 2025, the child was placed in the care of the Applicants for the mandatory bonding period. The child has resided with the Applicants continuously since that date.
14. Section 184(1) of the *Children Act* requires the child to be declared free for adoption by a registered adoption society. The Change Trust Adoption Society issued Certificate No. 008XXXX on 13 February 2025, declaring the child free.

The Adoption Application

15. I have considered the Summons, the evidence on record, as well as the various reports filed.
16. The duty of this Court is to analyse the material before it to determine whether the Applicants are suitable adoptive parents. The Applicants stated that they are committed Muslims and intend to raise the child in Islam development to ensure full spiritual development.
17. The Applicants have provided bank statements, evidence of business and employment income, which demonstrate their ability to maintain the child. The medical reports submitted declare the Applicants to be mentally and physically fit to adopt. The Applicants have provided Police Clearance Certificates confirming they have no criminal records.
18. Furthermore, the Court places significant weight on the reference letter from the Chief Kadhi of the Republic of Kenya, Hon. Abdulhalim H. Athman, dated 20 February 2025. The Chief Kadhi attests to the Applicants’ devotion to one another and values of kindness, patience, and service. He specifically commends the 2nd Applicant’s work with the Judiciary and the National Muslim Council of Kenya, describing her as a ‘beacon of ethical leadership’. Such a high-level endorsement speaks volumes to the Applicants’ moral suitability.

Analysis & Determination

19. The genesis of this case lies in a medical error: an IVF mix-up resulting in a child genetically unrelated to her birth parents.
20. Section 158(4)(a) and Section 186(8) of the Act require the consent of the parents. In Kenya, the woman who gives birth is the legal mother. This position was solidified in the landmark case of *A.M.N. & 2 others v Attorney General & 5 others* eKLR. Justice Lenaola (as he then was) held that in the absence of a specific legislation on surrogacy, the birth mother retains legal parenthood until a court order, such as adoption, transfers it, even if she has no genetic link to the child.
21. Therefore, despite the DNA result excluding ZMH as the biological mother, she remains the legal mother under Kenyan law. She, therefore, possessed the requisite legal capacity to offer the child for



- adoption. Her husband, AYEI, is the legal father by virtue of the presumption of legitimacy arising from marriage.
22. The Parent Offer mechanism is explicitly recognized as a valid route for adoption in Kenya. While often used in cases of poverty or inability to care, in this instance, it was utilized to resolve a crisis of identity and genetic disconnection. The birth parents, realizing the child was not theirs in the genetic sense and fearing social stigma, exercised their parental responsibility by surrendering the child to an adoption society rather than abandoning her illicitly. This action, while emotionally fraught, was legally sound.
 23. The Court, in *J.L.N & 2 others v Director of Children Services & 4 others* eKLR, emphasized that where legislative gaps exist (as with surrogacy and IVF errors), the Court must act to protect the dignity and best interests of the child. By accepting the consents of the legal (birth) parents, this Court provides a bridge from the confusion of the IVF error to the certainty of the adoption order.
 24. With regard to the consent of the genetic parents, a unique issue arises regarding the genetic parents of the child. They are unknown. The IVF error implies that another couple's embryos were implanted in the birth mother. These genetic parents have not been identified in the pleadings.
 25. Section 187 of the *Children Act* empowers the Court to dispense with consent if a parent cannot be found. Since the genetic parents are untraceable and have made no claim to the child, this Court invokes Section 187 to dispense with any theoretical consent required from them. To hold otherwise would leave the child in a permanent state of limbo, waiting for parents who may never know of her existence.
 26. The 'Best Interests' principle is the cornerstone of adoption law, enshrined in Article 53(2) of The *Constitution*. As established in *In re Baby A (Abdi)* eKLR, this principle overrides procedural technicalities. In this case, the best interests test favors the adoption for several reasons. The child is of Asian phenotype. The Applicants are of Asian heritage. The birth parents felt unable to raise a child who looked racially distinct. Placing the child with the Applicants resolves the crisis of identity. The child will grow up in a family where she physically fits in, reducing the trauma of "otherness." This aligns with the matching principles often considered in social work practice.
 27. The birth mother requested a Muslim family. The Applicants are devout Muslims, as evidenced by their marriage certificate and the Chief Kadhi's reference. This respects the cultural/religious background of the offer, if not the genes. The child has bonded with the Applicants for over 8 months. Disrupting this bond to place the child in institutional care would cause irreparable psychological harm. Without adoption, the child risks statelessness. Her birth parents have rejected her. Her genetic parents are unknown. Adoption by Kenyan citizens secures her status.
 28. This Court is satisfied that the Applicants have met all statutory requirements. They have approached this Court with clean hands and open hearts, seeking to rectify a situation born of medical misfortune. They have provided a home to a child who was effectively "orphaned" by an IVF error. The extensive reports from the DCS dated 23 October 2025 and Guardian ad litem dated 26 October 2025 corroborate that this adoption is not merely a legal transfer of rights, but a necessary act of rescue and love.
 29. There is no doubt in my mind that granting this adoption order is in the best interests of the child.
 30. Accordingly, I allow the Summons and make the following orders:
 - i. The Applicants, M.A.K. and N.B.K, are hereby authorised to adopt the child currently identified as Baby V Alias IAY Alias SAY, who will henceforth be named M.B.K;



- ii. The child is declared to be a citizen of Kenya, born on 27 September 2024 at Aga Khan Hospital, Nairobi County and is entitled to all the rights and privileges under The Constitution of Kenya and all other laws;
- iii. NUR is appointed as the legal Guardian of the child;
- iv. The Guardian ad Litem is hereby discharged;
- v. The Registrar-General is directed to make the appropriate entries in the Adopted Children's Register;

DATED AND DELIVERED AT NAIROBI THIS 16 DAY OF JANUARY 2026

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

For Applicants: Present in person

Court Assistant: Lucy Mwangi

