



REPUBLIC OF KENYA



KENYA LAW
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**In re RKM - (Minor) (Adoption Cause E006 of 2023)
[2026] KEHC 223 (KLR) (21 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 223 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
ADOPTION CAUSE E006 OF 2023
RN NYAKUNDI, J
JANUARY 21, 2026**

IN THE MATTER OF

EKK APPLICANT

JUDGMENT

Under Section 183(1) (2) 4(a) Section 185(4) (4), 186(a), (b) 186(8) (a) (b) of the Children's Act No. 29 of 2022 and S. 22 of the *Interpretation and General Provisions Act* and all enabling of the law of provisions of law)

1. Before Court is originating summons on the application for adoption dated 22nd June 2023 seeking for the following orders:
 - a. That Josephine Gesare Kagege of care of P. O. Box 64 Eldoret in the Republic of Kenya, be appointed Guardian ad litem in this case.
 - b. That the Children's Department investigate the Applicant's fitness to adopt the said infant and file its report in Court.
 - c. That the Applicant be authorized to adopt RKM.
 - d. That the Court do make any further orders as it may deem fit and necessary in the circumstance.
2. The application is supported by an affidavit sworn by EKK who deponed as follows:
 - a. That I am a Kenyan National residing in Eldoret within the Republic of Kenya.
 - b. That RKM was born on 24th February 2009.
 - c. That I am related by blood to RKM as the mother is my cousin.



- d. That the father of RKM died on 3rd July 2010 where I took up the responsibility of looking after the child as the mother had no means and were leaving in abject poverty.
 - e. That I have lived with RKM for the last 12 years where I have entered for her clothing, upkeep, food and shelter.
 - f. That the infant is so used to me as we have bonded for a long time.
 - g. That the mother having looked at her financial position and how I have brought up the child has granted me her consent to adopt RKM.
 - h. That the facts stated in our statement are true to the best of our knowledge, information and belief.
3. In support of the application is a report by the Director Children Services dated 26th May 2025 in context and text, it provides as follows:

Particulars and Background Information on Prospective Adoptive Mother

Name: EKK

D.O.B: 01/01/1974

Age: 51 years

Nationality: Kenyan

ID No.: 130XXXX

Religion: Christian

Occupation: Farmer

Place of Birth: Kisii North

Phone Number: (+254) 71XXXX

Marital Status: Single

Physical Address: Block 10 Kimumu

Home Particulars

County: Uasin Gishu

Sub County: Moiben

Location: Kimumu

Estate: Block 10

Background Information

EKK was born in Kisii county before she moved to Eldoret, she is a single mother of five children most of whom are adults. She moved to Eldoret to pursue her business endeavours and it is here that she discovered her passion in farming. She farms maize and vegetables that she trades at the local market.



Biological Children of E Kerubo (Professions to ask)

EDK 06/11/1989SK 30/03/1997EM 15/03/2002BK 28/04/2006MO
15/03/2008

Education and Professional History

The Applicant is a business lady within Kimumu area, she is a farmer and supplies the local market with fresh vegetables. Her highest level of education is O-level.

Children in this matter

Name: RKM

DOB: 24/02/2009

Sex: Female

Age 16 years

Place of Birth: Masaba South Nyanza

School: St. Joseph Primary School Webuye

Grade: Form 3

Parent & Siblings Views

Rael is a second child in a family of five children, her father is deceased and her mother SM is chronically ill and therefore she is not financially able to support all her five children. Her eldest child dropped out of school due to school fees challenges and insufficient parental guidance to help her navigate her teenage phase. S is well known to E since childhood in fact they are cousins, when E learned of S's sickness she offered to foster Rael, at that time Rael was 6 years old, she brought her to Eldoret where she enrolled her at Sunrise Academy and since then they have lived together. Occasionally E visits her home in Kisii, it is on these occasions that together with Rael they visit Rael's mother and her relations as they live nearby. Rael's mother and siblings welcome the prospective adoption of Rael as they have already experienced the support E has offered Rael especially in taking up responsibility to educate her. They are of the opinion that E has offered Rael a life that she would have never experienced had she been back home with them and their mother S because of the hard economic situation they are in. Rael's mother is a casual laborer in neighbor's farms and these casual jobs are season a land dependent on when she is physically able because of her health condition.

Marriage And Family

The Applicant is a single parent who has raised and educated her five children single handedly. Three of her children are gainfully employed and the other two are students, one of them is a university student.

Social Life (E's Social Life)

The Applicant is a Christian and worships at The Outreach Revival Church -Kimumu, her Pastor's testimonial is that her character is beyond



reproach and she diligently serves in the teaching ministry and a member of the compassion ministry. Her neighbors describe her as approachable and dependable.

Home Environment

When I visited the home (Children Officer Moiben) of E I made the following observation; That E lives in a permanent house (Bungalow) in Block 10 Kimumu, about 1KM branch off from Hawaii stage. The road accessing her home is tarmacked and the modes of transportation can be a matatu or Boda Boda cycles. The House is sufficiently big with three bedrooms, a kitchen and a living room. All bedrooms are ensuite. It is secured by a block fence and a steel gate. It is connected to electricity and supplied by ELDOWAS water. Just past the gate, there is a chicken coop, a cow pen and a kennel. Most of E's children have moved out of home, one son is a student at the University and was away in school when I visited. One of the sons Maxwell was in the farm and was supervising the planting of maize. Schools were closed and so Rael was at home and her birth mother was visiting as well. Rael has her own bedroom with her own bed with clean and sufficient beddings. On her bedside was a study table and a clothes wardrobe.

Financial Ability

E is a farmer, she cultivates 6 acres of land. When I visited, she showed me the farm, workers were at work planting maize, by ordinary standards, one acre of land produces between 45-50bags of maize. A bag of maize in Eldoret city goes for a market price of KES 3,500 that gives her an estimated annual income of KES 950,000. She supplements the income with small scale businesses including supplying the local market with fresh produce, from this she makes a monthly income of KES 20,000. She has cows and chicken that supplement the family's diet and the surplus is sold at the nearby market. E lives in her own home therefore she does not need to pay rent which further saves on family income. Apart from Rael in high School and Maxwell who is at the University the other children are self-reliant. Suffice to say the Applicant is financially able to take care of the child.

About The Child In This Matter

Rael Kerubo Mong'are is the biological child of Dismas Mon'gare and S Bosibori Mong'are of Township, Masaba South. Her father is deceased (Death certificate entry number 076100837) his cause of death is listed as internal bleeding due to trauma. She was born on 24th February 2009 (Birth Certificate Number No. 2531901049) and she is the third born among six siblings one of whom is deceased due to childhood diseases. Rael has lived with the Applicant since 2017 where she enrolled to school and has since lived with her and her family in Block 10 Kimumu location in Eldoret. As required by the *Children Act* No. 2022 that for every child who has attained the age of 11 years and above to participate, I sought the view of Rael who was at home for the Easter break, she said that she understood the process of adoption and was happy to be a



part of E family as she has provided love, care and protection for her since childhood. The minor in this matter was declared free for adoption by Kenya Children's Homes Adoption Society. The biological mother signed the "certificate of acknowledgement" as a testament that she understood the what adoption meant and that she was willingly offering her child for adoption.

Reasons Advanced For This Proposed Adoption

The Applicant said that since her cousin is dealing with a chronic disease, she is facing financial crisis and is not able to cater for all her children and the fact that she has bonded with Rael over the years she wants to take full responsibility as a parent through adoption.

Right To Inheritance

The Applicant is aware that every child has a right to provision of basic needs, protection from abuse and all the other rights of the children as stipulated in Article 53 of the Kenya constitution and Section 11 of the [Children Act](#) 2022. The Applicant is already providing the child the basic needs and have been living with the child since 2017. The Applicant is aware that every child has a right to inheritance in accordance with Section 17 of the [Children Act](#) 2022 and the Kenyan Law of succession; and she does not have any objection with the child inheriting from her wealth, assets and liabilities.

Brief Facts

The child in this matter has been declared free for adoption by Kenya Children's Home adoption society on 20th November 2024. The adoption agency is duly registered adoption society in Kenya by the National Council for Children's Services with a valid registration certificate. The Court appointed Josphine Gesare Kagege guardian ad litem. The guardian ad litem is the sister to the Applicant who unfortunately passed away in February 2025. The child in this matter has bonded well with the Applicant's family. She moved around easily within the compound and seemed to be in an environment that she was well accustomed to. I visually observed how the child related with the Applicant and I was left with the impression that they are well known to each other. Given the responsibilities that the Applicant has been undertaking over the child it is clear that she understood her position in the child's life. That she is responsible for her parental care, her nutrition, her medical care and that she is sheltered and educated. She also understood that if she adopted the child, she was to embrace her as her biological child that is entitled to inheritance over what she owns in equal measure as her own biological children. The Applicant is within the appropriate age to be able to adopt a child and she is a maternal aunty to the child. During the home visit, the Applicant supplied me with financial reports, I was satisfied that the Applicant can meet the child's needs that may need financial input.



Recommendations On The Best Interest Of The Children

Your Lordship, the Applicant in my considered view meets the requirements for adoption under Section 186(1) (b) of the *Children Act*, 2022. She has demonstrated the ability to provide basic needs for the child having provided for her for over 10 years since she fostered her. Your Lordship, the prospective adoptive parent is above 25 years and she is 21 years above the adoptive child's age and has not attained the age of 65 years thus meeting the provisions of Section 186 (2) (b) and (c) of the *Children Act* 2022. Upon perusal of presented documents to the Children Officer, I confirmed that the Applicant does not have any criminal record and have been cleared by the Directorate of Criminal Investigations Certificates Number PCC-ERXXXX dated on 22ND NOV 2023 as stipulated in the third schedule of the Children's Act 2022. The medical records reports dated 22ND March 2024 by Dr. M Koga of Mbagathi Hospital Nairobi indicates that E Kagege is of sound mind and has a good bill of health. Further, the Applicant has been granted approval to legalize adoption through the Court by the Kenya Children's Home Committee and the child in this matter has been freed for adoption vide certificate No.1XXX. The Applicant is a Kenya Citizen of ID No.130XXXX. The Applicant is the maternal aunt of the child in this matter and therefore this adoption is of Kinship nature. Your honour, I recommend that adoption orders are issued in favour of the Applicant.

4. It is from the strength of the affidavit evidence in support of originating summons together with the Director of Children Officer's input after a social enquiry which gave rise to a report dated 21st May 2025 that they proceed to consider the applicable law.

Decision

5. First and foremost, Article 53 of *the Constitution* provides holistically the frame of rights with regard to children thus:

53 (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
- j. Separate from adults and in conditions that



- (2) A child's best interests are of paramount importance in every matter concerning the child.
6. Besides the constitutional framework the primary legal instrument on legal guardianship or for that matter adoption and the plethora of rights as they relate to children is indeed the Children's Act as primarily enacted by the Legislature and any such subsequent amendments as the case may be.

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.

186. Who may apply to adopt a child

- (1) The Court may make an adoption order on application by—
- SUBPARA (a)
a sole applicant; or
- SUBPARA (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 interest 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.

7. In Section 8(1) (2) & (3) of the *Children Act* it provides as follows:

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies:



SUBPARA a.

The best interests of the child shall be the primary consideration; b. The best interests of the child shall include, but shall not be limited to the considerations set out in the First Schedule.

SUBPARA 2.

All judicial and administrative institutions, and all persons acting in the name of such institutions, when exercising any powers conferred under this Act or any other written law, shall treat the interests of the child as the first and paramount consideration to the extent that this is consistent with adopting a course of action calculated to :-

SUBPARA a.

safeguard and promote the rights and welfare of the child;

SUBPARA b.

conserve and promote the welfare of the child; and

SUBPARA c.

secure for the child such guidance and correction as is necessary for the welfare of the child, and in public interest.

SUBPARA 3.

In any matters affecting a child, the child shall be accorded an opportunity to express their opinion, and that opinion shall be taken into account in appropriate cases, having regard to the child's age and degree of maturity.

8. I have reviewed the four corners of the originating summons consulted *the Constitution* and the provisions of the Children's Act. I am of the considered view that there is merit in granting the following orders:

- a. That the Applicant EKK be and is hereby authorized to adopt the minor RKM.
- b. That JGK be and is hereby appointed legal guardian ad litem.
- c. That the Registrar of Births and Deaths specifically the one in charge of issuance of Birth Certificates do issue a Birth Certificate indicative of the names of RKM with the adoptive parent being E.K.
- d. That the Director of Immigration and Citizenship find it fit to exercise discretion at an opportune time and on application to issue a Passport to RKK.
- e. Costs of this application be in the cause.

DATED, SIGNED AND DELIVERED VIA CTS AT ELDORET THIS 21ST DAY OF JANUARY 2026.

.....

R. NYAKUNDI

JUDGE

