



**In re Adoption of FMM (Minor) (Adoption Cause E244 of 2025)
[2026] KEHC 631 (KLR) (Family) (30 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 631 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E244 OF 2025
H NAMISI, J
JANUARY 30, 2026
IN THE MATTER OF ADOPTION OF FMM (MINOR)**

IN THE MATTER OF

EO APPLICANT

JUDGMENT

1. Before this Court is the Originating Summons dated 22 August 2025, Statement in support of the Application for an Adoption Order and Affidavit in support of the Application, seeking the following orders:
 - i. That PMW be appointed as legal guardian of the minor, FMM;
 - ii. That the Guardian ad litem be discharged;
 - iii. That the Applicant be authorised to legally adopt FMM (herein referred to for all common interest and purposes as the minor) who will be known by the same name FMM;
 - iv. That the Registrar General be directed to enter this adoption in the adoption register.

The Applicant

2. The Applicant is a 31-year-old male, born in December 1993 in Kenya. He holds dual citizenship, possessing both a Kenyan National ID and United States citizenship. He serves in the United States Navy, stationed in Virginia Beach. The Applicant presented pay slips and bank statements that demonstrate financial stability and the capacity to support a dependant.
3. The Applicant is single. However, the Applicant disclosed the existence of a biological daughter, born in 2015, who resides in Kisii County. He supports this child financially, indicating a history of parental responsibility.



4. The Applicant articulated a desire to provide his niece, the child herein, with educational opportunities in the United States, specifically to pursue a career in medicine, which the Applicant believes is unattainable under her current circumstances.

The Child

5. The child was born on 4 March 2009 at Kijabe Hospital. At the time of the hearing, the child was almost 17 years old. She is a student at [Particulars Withheld], preparing to transition from Form 2 to Form 3.
6. At the hearing, the child displayed a high degree of maturity. She confirmed that she wanted the adoption, indicating that the American system is better than the Kenyan one. She stated that her parents are not in a position to provide that kind of education. The child's consent is not merely acquiescence but an active, informed desire for upward social mobility and educational attainment.
7. While not abandoned in the traditional sense, the child is socially vulnerable due to the financial constraints of her biological parents, who struggle to provide for her and her two younger siblings.

The Adoption Application

12. I have considered the Summons, the evidence on record, as well as the various reports filed. The crux of this Application lies in the precise nature of the relationship between the Applicant and the child. The Applicant is the first cousin of the child's biological father, PMW. Their mothers are sisters. In strict genealogy, the Applicant is the child's first cousin once removed. In the African context, and specially within the parties' community, the Applicant is regarded as an uncle and the child is his niece. The Director of Children Services (DCS) has classified this as a kinship adoption.
12. The duty of this Court is to analyse the material before it to determine whether the Applicant is a suitable adoptive parent. The Applicant stated that he is a committed Christian and intends to raise the child in a Christian development to ensure full spiritual development.
12. Additionally, pursuant to section 186 of the *Children Act*, the Applicant provided letter of consent from PMW agreeing to be appointed as the legal guardian of the child in the event that anything untoward happens to the Applicant. The proposed legal guardian confirmed that she completely understands her role and what is expected of her. The existence of a female legal guardian provides an alternative layer of protection and maternal oversight, addressing the gendered concerns implicit in Section 186(4).

Analysis and Determination

12. In deciding any matter involving a child, the Court is obligated to give priority to the best interests of the child. Section 8 of the *Children Act* provides:
 1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies—
 - a. The best interests of the child shall be the primary consideration;
 - a. The best interests of the child shall include, but shall not be limited to the considerations set out in the First Schedule;
 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:-

- a. Safeguard and promote the rights and welfare of the child;
 - a. Conserve and promote the welfare of the child; and
 - a. Secure for the child such guidance and correction as is necessary for the welfare of the child, and in the public interest.

12. In the instant case, the best interest calculus involves weighing the child's current reality (financial struggle, limited educational prospects in Kenya) against the proposed future (stability, US Navy benefits, medical education in the USA). Upward social mobility and access to superior education are valid components of a child's best interests. The DCS report explicitly states that the adoption has the child's best interest at heart, a finding this Court is inclined to accept given the robust evidence of the Applicant's capability

13. One of the most contentious issues in this petition is the gender of the Applicant. Section 186(4) of the *Children Act* states:

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.

12. This provision is markedly different from the repealed *Children Act* 2001, which allowed a sole male to adopt a female child if special circumstances existed (Section 158(2)). The 2022 Act has removed the special circumstances discretion for non-relatives. A sole male stranger cannot adopt a female child under the new regime. The door is only open if the applicant is a blood relative.

13. This legislative shift reflects a protective anxiety regarding the safety of female children in the care of single men. However, by retaining the exception for blood relatives, Parliament acknowledged that consanguinity often provides a natural safety net and cultural appropriateness that mitigates these risks.

14. In *In re A K, B K & M C (Children)* [2017] KEHC 6169 (KLR), Justice Mumbi Ngugi allowed a sole male applicant (a maternal uncle) to adopt his nieces and nephews. Although decided under the 2001 Act, the Court relied on the intra-family nature of the adoption as a special circumstance. More recently, under the 2022 Act regime, the Court in *In re JW (Minor)* (Adoption Cause E003 of 2023) KEHC 11064 authorized a sole male applicant (a Kenyan residing in the US) to adopt his niece. The Court specifically dispensed with the sole male prohibition because the applicant was a blood relative (maternal uncle). This decision is squarely on all fours with the current application and persuades this Court to find that the Applicant, if proven to be a blood relative, is exempt from the bar.

15. The Applicant is a first cousin to the child's father. Does this make him a relative under the Act? Section 2 of the *Children Act* 2022 defines "relative" for the purpose of adoption as:

...a mother, father, brother or half-brother, sister or half-sister, maternal or paternal uncle or aunt or grandparent or step-parent of a child;

12. This definition appears exhaustive. Cousin or parent's cousin is not explicitly listed. A textualist interpretation might suggest that the Applicant is not a relative under Section 2, and therefore not a blood relative under Section 186(4). If this strict interpretation holds, the adoption is statutorily barred.



13. However, such an interpretation would lead to a manifest absurdity, excluding biologically related kin who functions as an uncle, while including a step-parent (who may have no blood relation) as a relative. This Court adopts a purposive interpretation of the statute, guided by Article 259 of *The Constitution*, which requires laws to be interpreted in a manner that promotes the purposes of *the Constitution*.
14. In the Kenyan socio-cultural context, the term "Uncle" is fluid. A father's male first cousin is functionally and culturally an uncle. The DCS, the statutory body mandated to implement the Act, classifies the Applicant as the child's "Uncle" in its report. The biological father refers to him as "like a brother".
15. In *In re Adoption of Baby PM KEHC 5444 (KLR)*, the Court reiterated that where a child is abandoned or vulnerable, the expansive view of family under Article 45 of *the Constitution* must inform the interpretation of statutory definitions.
16. Therefore, I find that a first cousin once removed falls within the purposive definition of 'Uncle' under Section 2 of the *Children Act* 2022. Consequently, the Applicant is a blood relative for the purposes of Section 186(4), exempting him from the sole male prohibition.
17. The Court has scrutinized the Applicant's profile. He is gainfully employed in a high-security role, implying a rigorous background check has already been conducted by his employer. The DCS Report confirms he has no criminal record and is mentally and socially sound. His financial disclosures show a net disposable income sufficient to care for the child without strain. His continued support of his biological daughter in Kisii speaks to his reliability as a father figure.
18. The biological parents, Pius Mogeni and Cecilia Nduta, appeared in Court and gave viva voce evidence of their consent. They executed the necessary statutory forms on 12 November 2024. They appeared to understand the irreversibility of the order. The child gave her consent in writing and orally. She is 16 years old, well above the statutory age of 10 years required for consent (Section 186(8)(c)). No spousal consent is required as the Applicant is single.
19. The adoption will not strip the child of her Kenyan citizenship. Under Article 16, she remains a Kenyan citizen by birth. The adoption will, however, facilitate her acquisition of a dependent visa (and potentially citizenship) in the United States, aligning with her best interests.
12. The Court has noted the presence of an Affidavit in the bundle referring to a minor "Ruth Mokeira Samwel." Given that all other documents, the hearing transcript, and the DCS report refer to "FMM," the Court treats the mention of Ruth as either a clerical error by the drafting counsel or a separate, concurrent family matter not subject to this specific judgment.
12. Accordingly, I allow the Summons and make the following orders:
 - i. The Applicant, E.O, is hereby authorised to adopt the child identified as FMM;
 - ii. PMW is 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;

DATED AND DELIVERED AT NAIROBI THIS 30 DAY OF JANUARY 2026

HELENE R. NAMISI

JUDGE OF THE HIGH COURT



Delivered on virtual platform in the presence of:

For Applicant: Ms Achieng

Court Assistant: Lucy Mwangi

