



**In re BJE alias HPO (Adoption Cause E002 of 2025)  
[2026] KEHC 1731 (KLR) (12 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 1731 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT HOMA BAY  
ADOPTION CAUSE E002 OF 2025  
OA SEWE, J  
FEBRUARY 12, 2026  
IN THE MATTER OF ADOPTION OF B J E ALIAS H P O  
AND  
IN THE MATTER OF AN APPLICATION BY L A A O**

**IN THE MATTER OF**

**LAAO ..... APPLICANT**

**JUDGMENT**

1. The Originating Summons dated 11<sup>th</sup> April 2025 was filed by the applicant Linet Atieno Agalo Ochieng pursuant to Sections 183, 184, 185, 186, 187, 194, 195 and 201 of the Children Act No. 29 of 2022 for the following orders:
  - (a) That the applicant Linet Atieno Agalo Ochieng be authorized to adopt Baby BJE alias HPO and that an adoption order be issued and be extracted in the prescribed form under the Children Act and Rules.
  - (b) That the Baby be henceforth formally known as HPO and that the Registrar of Births and Deaths do issue the said Baby BJE alias HPO with a Birth Certificate containing her full names as given by the adoptive parent.
  - (c) that the Registrar General be directed to make the appropriate entries in the Adopted Children's Register to reflect the adoption of the child, Baby BJE alias HPO by the adoptive parent herein, Linet Atieno Agalo Ochieng.
  - (d) That the Court be pleased to make any further orders it deems necessary.
2. In her Statement dated 11<sup>th</sup> April 2025, the applicant averred that the Baby she wishes to adopt is known as BJE and that she is a child of the female sex born on 19<sup>th</sup> July 2023 at Itandi Mission Hospital



within Vihiga County in the Republic of Kenya. She stated that the Baby was born to twenty-year-old LK and WN who are relatives; and that, according to the parents' custom, a child born out of such a relationship cannot be brought up within the community. Accordingly, on 20<sup>th</sup> July 2023, L and W's cousin SC approached Mulundu Sub-Location Assistant Chief seeking help them have the Baby surrendered for adoption.

3. The applicant further stated that the Assistant Chief referred them to Vihiga Sub-County Children Office from where they were referred to Little Angels Network Kisumu Office. The Baby's biological mother visited Little Angels Network Kisumu with a view of offering the Baby for adoption. She added that the child's biological father had disappeared before her birth and could not be traced. The applicant also stated that Baby's mother willingly signed the Certificate of Acknowledgement and Initial Consent dated 21<sup>st</sup> July 2023 surrendering the Child for adoption.
4. The Child was placed at Springs of Life Children's Home on 21<sup>st</sup> July 2023 and was formally committed into the legal custody of Springs of Life Children's home in August 2023 vide Protection and Care Case No. 33 of 2023 by the Vihiga Senior Principal Magistrate's Court for a period of three years. The placement was facilitated by the Vihiga Sub-County Children's Office.
5. The child was thereafter declared free for adoption by the Case Committee of Little Angels Network after the requisite inquiries and deliberations were undertaken, and upon the Committee being satisfied that adoption would be in the best interest of the child. A certificate to that effect dated 11<sup>th</sup> October 2023 was annexed to the Statement and marked Annexure LAAO.
6. The applicant also stated that she is a citizen of Kenya and a teacher by profession, currently residing in Ndiru Centre in Homa Bay County. She added that she was born on 1<sup>st</sup> July 1976 and is a widow; her husband having passed on in March 2010. She stated that she has three biological children sired by her husband, their particulars being:
  - (a) Name: WO  
Gender: Male  
Date of Birth: Y<sup>d</sup> April 2000
  - (b) Name: AO  
Gender: Male  
Date of Birth: 24<sup>th</sup> February 2003
  - (c) Name: JO  
Gender: Male  
Date of Birth: 7<sup>th</sup> May 2007
7. The applicant further stated that she had discussed her plans to adopt the subject child with her aforementioned children and they are all in agreement and have given their consent. She also placed a request with the Little Angels Network and the institution has consented to her request to adopt the Baby, having investigated her fitness to adopt the child. She annexed a copy of the Pre-Placement Report as Annexure LAAO-3 and added that the Springs of life Children's Home has no objection to her application for adoption.
8. Further to the foregoing, the applicant stated that NA and DOA, had already been appointed as Legal Guardians of the child in the event of her death. She exhibited the Guardians' Letter of Consent as



Annexure LAAO-4 to buttress her assertion. Regarding her personal attributes, the applicant stated that:

- (a) She is physically and emotionally fit and healthy and therefore fully competent to parent and take care of the Baby.
  - (b) She is capable of assuming financial responsibility for the Baby's medical care, education and general upkeep.
  - (c) She has a home with a comfortable environment, which is suitable for nurturing children and ensuring their full development.
  - (d) She is a practicing Christian and intends to bring up the child in the said faith.
  - (e) She has never been charged with nor convicted of a criminal offence or of any offence referred to in the third schedule of the *Children Act 2022*.
  - (f) She has not received or agreed to receive payment and no person has made or given or agreed to give her any payment or reward in consideration of the adoption.
  - (g) She has no interest in this matter that is adverse to those of the child.
9. Lastly, the applicant stated that, if an adoption order is made, she proposes that the child be named HPO. She also confirmed that the child is currently under her care.
10. The Court had earlier given directions for the appointment of NA and DOA as Guardians ad litem in this matter in the event that the applicant is incapacitated or in any way unable to discharge her parental obligations. An order was also made directing the County Director of Children Services to investigate the applicant's fitness to adopt the Baby. A report to that effect was filed herein dated 10<sup>th</sup> June 2025. That report shows that an assessment was done on 20<sup>th</sup> May 2025 by the Sub County Children's Officer, Rangwe, to establish family environment, the subject's living conditions and the applicant's suitability to adopt the child. The report shows that:
- (a) The child had adapted well to her new environment and had bonded well with the applicant.
  - (b) The applicant is able to provide and absolutely exercise parental responsibility over the child; and that the children of the applicant have wholeheartedly welcomed the child into their home and consider her their small sister.
  - (c) There is a well-established relationship between the applicant and the proposed guardians since they are relatives.
  - (d) The applicant's brother in law, one Daniel Ojijo also consented and had welcomed the child into the family.
11. In view of the foregoing, the Children's Officer unreservedly recommended the adoption of the subject by the applicant.
12. The suit was canvassed by way of affidavits. In addition to her own affidavit, the applicant availed the written consent of the Guardians Ad Litem, NA and DOA in which they expressed willingness to be appointed as such. The applicant also relied on the affidavit of Daniel Ojijo as to the fitness of NA and DOA to be appointed as Guardians Ad Litem for the Baby. He averred that he has known the couple for over 10 years and could therefore vouch that they have no interests in this adoption cause that are adverse to the interests of the child.
13. Article 53(2) of *the Constitution* is explicit that:



- (2) A child's best interests are of paramount importance in every matter concerning the child.
14. This precept is reiterated in Section 8 of the *Children Act*, No 29, 2022. The provision states as follows:
- (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;
    - (b) 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;
    - (b) conserve and promote the welfare of the child; and
    - (c) secure for the child such guidance and correction as is necessary for the welfare of the child, and in the public interest.
  - (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.
15. Therefore, in a matter such as this, the court is enjoined to give due consideration to the aforesaid. Indeed, the purpose of adoption is to provide children who cannot be raised by their birth parents with a permanent, secure, and loving family with a view ensuring their long-term stability and well-being. For this reason, Section 183 of the *Children Act*, which is one of the provisions relied on by the applicant, provides that:
- (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.
16. The evidence placed before the Court confirms that the child, now two years old, has been in the custody and care of the applicant with the permission of Little Angels Network and the Springs of Life Children's Home. A Certificate declaring the Baby free for adoption was exhibited by the applicant alongside a report prepared by Little Angels Network pursuant to Section 184(1)(a) of the *Children Act*. In addition, the report by the Children's Officer confirms that as at the time of the assessment, the child had bonded well with the applicant and her family. The applicant also demonstrated that the child had been voluntarily offered for adoption by her biological parents.
17. In addition to the foregoing, Section 194(1) of the *Children Act* is explicit that:
- “Before making an adoption order, the Court shall inquire into and be satisfied on evidence before it that—
- (a) every person whose consent is required under this Part, which consent has not been dispensed with, has consented to and understands the nature and effect of the adoption order for which the application is made;
  - (b) in the case of a parent, the parent understands that the effect of the adoption order is to permanently deprive him or her of his or her parental rights;
  - (c) if made, the order will be in the best interests of the child, having regard to the wishes of the child, depending on the child's age and understanding, and to the ability of the applicant to maintain and educate the child;
  - (d) the applicant has not received or agreed to receive, and that no person had made or given or agreed to make or give to the applicant, any payment or other reward in consideration of the adoption;
  - (e) any person whose consent is dispensed with on the grounds of incapacity is still incapable of giving consent at the date of making the order;
  - (f) where the applicant is not a relative of the child, reasonable steps have been taken to inform the relatives of the child of the proposed adoption, and no relative who is capable of exercising care over the child has expressed willingness to do so;
  - (g) both the applicant and the child have been assessed and evaluated by a duly registered adoption society in Kenya in accordance with this Act and the society's report delivered to the Court; and
  - (h) the Council has certified and declared the child free for adoption.”
18. The foregoing requirements having been met by the applicant to the satisfaction of the Court, I find merit in the Originating Summons dated 11<sup>th</sup> April 2025. The same is hereby allowed and orders granted as hereunder:



- (a) That the applicant Linet Atieno Agalo Ochieng be and is hereby authorized to adopt Baby BJE alias HPO and that an adoption order be issued and be extracted in the prescribed form under the *Children Act* and Rules.
- (b) That the Baby shall be henceforth formally known as HPO and that the Registrar of Births and Deaths do issue the said Baby HPO with a Birth Certificate containing her full names as given by the adoptive parent.
- (c) That the Registrar General be and is hereby directed to make the appropriate entries in the Adopted Children's Register to reflect the adoption of the child, HPO by the adoptive parent herein, Linet Atieno Agalo Ochieng.
- (d) That NA and DOA be and are hereby appointed as Guardians of Baby HPO in the event the applicant is unable to discharge her parental responsibilities.
- (e) The order of 5<sup>th</sup> May 2025 appointing NA and DOA Guardians Ad Litem in this matter be and is hereby revoked.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT HOMA BAY THIS 12<sup>TH</sup> DAY OF FEBRUARY 2026**

.....

**OLGA SEWE**

**JUDGE**

