



**In re EMM (Child) (Adoption Cause E009 of 2025)
[2026] KEHC 1205 (KLR) (5 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 1205 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
ADOPTION CAUSE E009 OF 2025
FN MUCHEMI, J
FEBRUARY 5, 2026**

IN THE MATTER OF

**AWK 1ST APPLICANT
EMM 2ND APPLICANT**

JUDGMENT

1. The Originating Summons for determination dated 15th August 2025 seeks for orders of adoption of child E M M who upon adoption should be known as E M M. An order directing the Registrar General to make an entry in the Adopted Children’s Register has been sought.

The Applicants’ Case

2. The applicants are husband and wife married under Kikuyu Customary Law in 2018 whereas the 2nd applicant is the biological father of the minor. The applicants state that they have four children together namely V W M, E M M, L K M and J M born on 25th July 2010, 5th August 2016, 20th September 2017 and 23rd October 2021. It is Averred that save the minor herein was born on 6th August 2009.
3. The applicants aver that the child’s biological mother, T W K died on 14th December 2009 at Thika District Hospital and the 2nd applicant took care of the child singlehandedly until he married the 1st applicant in 2018. Ever since their marriage, the applicants state that the child has continued to grow under their care, control and custody and that the child has a good relationship with the 1st applicant and desires that the relationship is formalized.
4. The applicants state that the purpose of the adoption is to legally allow the 1st applicant to become the child’s mother, a role that has been executed for the last eight (8) years with utmost love and commitment which will also give the child a sense of identity and more chances in life.
5. The 1st applicant states that she is a healthcare professional working at Ridgeview Ltc Healthcare in Canada while the 2nd applicant is a driver currently operating in Kenya and they state that they are



financially stable with adequate resources to continue taking care of the child. It further averred that the applicants reside in Ruiru Rainbow Area in a two bedroom house which is a homely environment suitable for raising the children.

6. The applicants aver that they are committed Christians and intend to raise the child in a Christian environment. It is further stated that the Applicants have no criminal records that would hinder them from adopting the minor. The applicants further state that KKPI Adoption Society have confirmed to them that the child has been freed for adoption through adoption certificate number 0986 on 30th October 2024.

Issue for determination

7. The main issue for determination is whether the applicants have satisfied the legal requirements under the Children's Act to be granted the adoption order.

The Law

8. The preliminary requirements for the making of an adoption order are set out in Section 184(1) of the Children's Act which provides as follows:-

No arrangement shall be commenced for the adoption of a child unless the child is at least six (6) weeks old and has been declared free or adoption by a Registered Adoption Society in accordance with the Rules prescribed in that behalf.

9. It is trite that for an adoption order to issue, the court has to ensure that the following facts are taken into consideration:-
 - a. A child must be at least six (6) weeks old and free for adoption;
 - b. The child concerned must have been in the continuous care and control of the applicant within Kenya for a period of three (3) consecutive months preceding the filing of the application; and
 - c. Both the child and the applicant have been evaluated and assessed by a registered adoption society in Kenya.
10. In the instant adoption cause, pursuant to the Birth Certificate, the child was born on 6th August 2009 and therefore he is over sixteen (16) years, well above the six (6) week age limit provided for by the law. The minor was declared free for adoption by KKPI Adoption Society vide certificate number 0986 and post freeing report dated 28th November 2025.
11. From the record, the biological mother of the child, one T W K is deceased as evidenced by the death certificate serial number 0849167. There is also on record a Children's Officer Report dated 10th December 2025 which confirms that the child's biological mother died on 14th December 2009 and the child lived with his maternal aunt and legal guardian J W until the year 2021 when he completed his KCPE. The minor thereafter began living with the applicants and his siblings, who he has bonded well with.
12. The court has a duty to assess the suitability of the applicants as adoptive parents to the child. The 2nd applicant is the biological father of the child whereas the 1st applicant is the wife of the child's biological father. The applicants have sworn in their affidavit that they are married under Kikuyu Customary Law and have been living as husband and wife since 2018. The couple have demonstrated that they are resident in Ruiru and have made it their home. However, the 1st applicant is resident in Canada where she works as a healthcare provider. Although she is out of the country, the 1st Applicant maintains



regular and consistent communication with the minor and the rest of the family. It is therefore my considered view that this is a kinship or family adoption. A kinship adoption is a domestic adoption and the requirements for that kind of adoption are well set out in Part XIV of the Children's Act as follows:-

- a. The applicant is above twenty five years of age and below sixty five years of age;
 - b. The applicant is a relative of the child;
 - c. The child has been declared free for adoption;
 - d. That all the reports and evaluations conducted indicate that it is in the best interests of the child that the applicant adopts the child as demonstrated by the fact that they are family, and that the applicant has been educating and providing for the child since birth
 - e. The child has given her consent to being adopted by the applicant;
 - f. The biological parents have given their consent.
13. In deciding upon any matter involving a child, courts are obliged to give priority to the best interests of the child pursuant to Article 53 of *the Constitution*. The report by the Director of Child Services shows that the applicants are in a stable family and have jointly cared and provided for the child for the past four years. The report and the affidavits by the applicants further indicate that the applicants are financially stable to provide for the child with the 1st applicant earning USD 4,000 per month as a healthcare provider. Both applicants were examined and found to be medically fit. Further, the biological mother of the minor is deceased, thus it is my considered view that her consent must be dispensed with. The report recommends the adoption of the minor and further provided that the applicants satisfied all the other requirements for a local adoption as per the *Children Act* 2022 and recommended the adoption as it would make the child's life more stable. The applicants have produced the child's consent to being adopted by the 1st applicant and police certificates for criminal clearance.
14. Similarly, the Guardian ad litem has recommended adoption of the child by the applicants as being in the best interests of the child. This is the person who has been given legal standing to make statements on behalf of the child. The reports show that the applicants that their home environment is safe secure and satisfactory; that the child is relating well with the 1st applicant and that the applicants have not received or agreed to receive any reward in consideration for the adoption.
15. As such, the applicants having complied with all the requirements of the law for purposes of adoption and the best interests of the child having been taken into consideration, the applicants are hereby allowed to adopt the minor herein. Accordingly, the Originating Summons dated 15th August 2025 is allowed in the following terms:-
- a. That the applicants are hereby authorized to adopt minor E M M who will be known by the same name upon adoption.
 - b. That the Registrar General do enter this adoption in the Register of Adoptions.
 - c. That J W K is hereby appointed as the legal Guardian of the child.
 - d. That the child is hereby presumed to have been born in Kenya.
16. It is hereby so ordered.

JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 5TH DAY OF FEBRUARY 2026.



F. MUCHEMI
JUDGE

