



**In re Baby BNK (Adoption Cause E005 of 2026)
[2026] KEHC 2950 (KLR) (6 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 2950 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
ADOPTION CAUSE E005 OF 2026
RN NYAKUNDI, J
MARCH 6, 2026**

**IN THE MATTER OF SECTIONS 8, 102(1), 102(2) (B) (C) (D),
103(1), 122,123,125,134, 135, 183, 184, 185, 186, 187, 188 AND
193 OF THE CHILDREN'S ACT,2022 CAP 141 LAWS OF KENYA**

AND

IN THE MATTER OF ARTICLE 53(2) OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF AN APPLICATION FOR ADOPTING BY LTO

AND

IN THE MATTER OF ADOPTION AND CUSTODY OF BABY BNK

IN THE MATTER OF

LTO APPLICANT

RULING

1. Before this court is an Ex Parte Originating Summons dated 10th day of February 2026 seeking the following orders:
 - a. That the Report prepared by the KKPI (Kenyan's to Kenyan's Peace Initiative) Adoption Society on the declaration of the minors free for adoption be deemed as duly filed.
 - b. That pending the hearing and determination of the originating summons, KKW be appointed as Guardian Ad Litem for BN the child.
 - c. That, the Applicant, LTO be authorized to adopt BN, who shall henceforth be named as BNK
 - d. That, the Registrar General be ordered to make the appropriate entries in the Adopted Children Register accordingly to reflect BNK legal identity.



- e. That the applicant be granted leave to travel with the minor outside the jurisdiction of the Republic of Kenya.
 - f. That, this Honorable Court may issue any further orders or directions it deems fit and expedient in the interest of the child.
2. Which application is based on the following grounds:
- a. The Applicant is the child's step mother.
 - b. The Applicant desires to adopt the subject minor and take her in as her own biological child.
 - c. The child has been under the Applicant's care since 2023.
 - d. The immediate family members, including the child's biological parents, have consented to the adoption of the Child by the Applicant.
 - e. The Applicant is a law-abiding citizen with no criminal record.
 - f. The Applicant does not have any medical conditions that may hinder her from affording the child a quality upbringing.
 - g. The Applicant undertakes to continue providing fully for the wellbeing of the child in her best interest, as she does for her own biological children.
 - h. The Applicant understands her responsibilities as an adoptive parent, including the fact that the adoption process is permanent and irreversible.
 - i. The Applicant is heterosexual and is not inclined towards homosexual or lesbian tendencies.
 - j. The Applicant lives in a conducive environment, where she intends to bring up the child as one of her own.
 - k. The Children Officer has assessed the Applicant and confirms her suitability as an adoptive parent for the minor.
 - l. No previous application has been made with respect to the adoption of the subject minor.
 - m. All relevant consents have been obtained.
 - n. The Applicant is able and willing to offer the minor a name, home, and an opportunity to live a normal family life in comfortable surroundings.
 - o. The best interest of BN, as provided by Section 8 of the Children's Act and Article 53(2) of *the Constitution*, 2010, will be realized by allowing this summons as prayed.
3. In support of the application is the annexed affidavit of LTO who deponed as follows:
- a. That I am the Applicant herein, fully conversant with the facts of this case, and legally authorized to swear this affidavit.
 - b. That, the child forming the subject of these proceedings, BN, is my stepson by virtue of being the son to my Husband.
 - c. That I desire to adopt the subject minor and take her in as my own biological child.
 - d. That, the immediate family members, including the applicants' children, have consented to the adoption.



- e. That, the child, being 17-year-old, has similarly consented to his adoption by me in compliance with section 186 (8) (c) of the Children's Act, 2022.
 - f. That I am a law-abiding citizen with no criminal records.
 - g. That I do not have any medical condition(s) that may hinder me from affording the child a quality upbringing.
 - h. That I have experience in raising children by virtue of being a biological parent to three children of my own.
 - i. That I undertake to continue fully providing for the wellbeing of the child in her best interest, just as I do for my own biological children.
 - j. That I fully understand my responsibilities as an adoptive parent and that the adoption process is permanent and irreversible.
 - k. That I am passionate about children, having shouldered the child's basic needs for the past three years.
 - l. That I am Self-employed earning a monthly income of 5,800 pounds (Kshs. 1,013,814/=) and I have a home at Annex area in Eldoret Kenya and therefore financially stable to sustain the said minor.
 - m. That, the KKPI (Kenyan's to Kenyan's Peace Initiative) Adoption Society interviewed us and have prepared separate Reports clearing the minor BN for adoption. I hereby provide the Reports to this court for its perusal and necessary action.
 - n. I confirm to this Honorable Court that no previous application has been made relating to the adoption of the subject minor.
 - o. That all relevant consents have been obtained as aforesaid.
 - p. That I am able and willing to offer the minor a name, a home, and an opportunity to live a normal family life in comfortable surroundings.
 - q. That I confirm that I am a heterosexual individual, and I have not engaged in or aspired toward any homosexual or lesbian tendencies.
 - r. That I further confirm that I have not received or agreed to receive any payment or reward in consideration of the adoption herein.
 - s. That, the best interest of BN will be safeguarded by allowing this summons as prayed.
 - t. That, the said KKW has agreed to act as guardian ad litem.
4. As part of the inquiry on the suitability and eligibility test, it is mandatory that the Director of Children services undertake a social investigation on the various parameters to establish whether the applicants' application meets the threshold of being adoptive parents of the minor. In the instance case, the content and text of the inquiry report made the following key observations:

Adoptive Child's Name: BNK

D.O.B: 25/02/2009-

Birth Certificate Entry No.XXXX

Gender: Male



PARENTS

Mother: JKN

Father: CWM

Prospective Adoptive Parent

Name: LTO

D.O.B:03/03/1972

ID NO.XXXX

Current Residence

County: Eldoret

Sub-county: Kesses

Location: Outspan

Sub location: Outspan

Village/Village: N/A

Family History

The prospective adoptive parent is the Step-Mother to the prospective adoptive child. He is a Step-son to the prospective adoptive parent. He is the Only child in their family. His parents are JKN and CWM who are Separated.

Interview With The Prospective Adoptive Parent-LTO

She is 54 years old and a Step-mother to the adoptive child. She is married to JKN father to the adoptive child. She has 3 children namely DAM- 29yrs, LJM -23 yrs. and SMM -20yrs who are all adults and have consented to the process. She has a dual citizenship; Kenyan and United Kingdom citizenship. She says she has been supporting with all the basic needs to the child since 2023 when she is requested to give a helping hand by her Husband. She says she has developed a strong bond and attachment with the child since 2023 and interaction with the child whom testified that the adoptive parent has been treating him well by buying him clothes, taking him for vacation, visiting him in school and cooking delicious meals when he visits her during school holidays. She stays with the child during school holidays when she visits the country. She says she wants to adopt the child so that she can legally acquire parental responsibilities and rights to the child as she wants to give him the best to achieve his life goals. She wants to give him the best in life according to her financial status through providing all his basic needs, parental care and love so that he achieves his life time goals and ambitions. She also wants him to be part of her family. She says through adoption the child will be legally under her care and custody which will enable her to understand him better and open opportunities for him in the United Kingdom. She is always concerned about the welfare of B and a strong familial bond has been developed between the prospective adoptive parent and the adoptive child who is his Step Mother. She says she loves B with all her heart and B loves her too. She says she wants to provide the best for the child welfare to grow to be a responsible citizen.

Religion Of The Prospective Adoptive Parent

She is a Christian and she is a member of AIC Kotetui. She will bring up Brooklyn in the same faith until he grows up to an adult person to make his decisions.



Interview With The Adoptive Child-BNK

He is the Only child in the family. He identifies with the prospective adoptive parent whom he refers to as his Step mother. He says he loves the prospective adoptive parent so much because he treats him. He says he buys him good clothes, pays his school fees, buys uniform, presents and stationery for him. He also prepares balanced delicious meals for him when he visits her during school holidays. He says he loves the prospective adoptive parent because of her excellent treatment. He says her prospective adoptive parent treats him well with love, has been paying his school fees, stationery, pocket money providing him with all the other basic needs and above all parental love, care, guidance and counseling as his own biological child. The child has developed a strong attachment and identity with the prospective adoptive parent. He loves drama, Football and theatre and would wish to be a Doctor after accomplishing his studies.

Education Of The Prospective Adoptive Child

He is a Form 4 Student at Nyahururu High school. He is a good Student in academics according to his school academic report.

Interview With The Biological Parents To Prospective Child-JKN AND CWM

The parents to the prospective adoptive child are a couple and have One but separated due to irreconcilable differences. They are Practice business for their source of livelihood. They say the prospective adoptive parent is the wife to JKN and step mother to the prospective adoptive child and she has been in the life of the child since 2023 through support in providing all his basic needs and a strong bond has been established between the child and the prospective adoptive parent. She has been very close to them as a family and they don't have any objection in her undertaking to adopt their child. They say they understand the process of adoption and they have no objection of LTO adopting their child since she has been supporting him with the provision of basic needs to the child and she has been in the life of the child since 2023.

The home environment is safe and conducive for the child's holistic growth and development. The child has been declared free for the process of adoption through KKPI Adoption Society Certificate Serial No.002593 dated 30th April, 2025 as Kinship adoption. The prospective adoptive parent is undertaking legal kinship adoption which is a new legal alternative care process as per Sec 191 of the *Children Act* 2022 which is an important undertaking in child care and protection within the family and should be highly promoted in families in our country.

Conclusion

Your lordship basing on the above observations on the welfare of the prospective adoptive child and best interest considerations of the child, I have no objection for LTO ID No.XXXX being appointed as an adoptive parent to BNK Birth Certificate Entry No. XXXX having met the set criterion in Section 184(1), 185(1)(2) (4) (a), 186(3)(8)(c) and 193 of *Children Act* No.29 of 2022 in the best interest of the child. Your lordship the child communicates well and can be able to express himself hence involving him in the process before the Honourable court which affects her welfare is paramount as per Section 28(3) of the Children's Act 2022 in her best interest.

Decision

5. This is a kinship adoption and the requirements are 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.
6. Section 4 - Survival and best interests of the child;
- (3) All judicial and administrative institutions, and all persons acting in the name of these institutions, where they are exercising any powers conferred by this Act 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;
 - (c) secure for the child such guidance and correction as is necessary for the welfare of the child and in the public interest.
7. *The constitution* itself under Article 53 is not left behind in emphasizing the characterization of the rights on the fundamental rights and best interest of the child in which the State is under obligation to ensure the protection and guarantees.
8. In this respect, with regard to adoption, international law being part of the sources of law of this country in terms of Article 2(5)(6) plays a major role in developing progressive jurisprudence on the children Human rights to safeguard the welfare and best interest. One of the key treaties is the Convention on the Rights of the Child which provides for matters of child survival, protection and development. In so far as child survival is concerned, it lays out in detail the fundamental rights and freedoms of the child such as the right to life, equality, name, nationality, con-science, expression, religion, non-discrimination and the principle of concern for the best interests of the child in public decision-making. Matters of child protection include special protections from dangers to which children are particularly susceptible such as physical and mental mistreatment or abuse, abduction or trafficking and economic and social exploitation. On child development, the Convention seeks to promote access to such basic necessities as education, information, leisure, play and cultural activities.
9. What are these rights which are important to children? These fundamental rights are provided for in *the Constitution* of Kenya in Chapter V and include the rights to life, liberty, freedom of assembly and freedom of expression. The other statutory provisions under the children’s act include section 185 which expressly states as follows:
- (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. Children who may be adopted.
- (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.

10. The other relevant provision towards making an adoption is section 188 of the act which provides as follows:

1. Where an application is made for an order, the Court shall, either of its own motion or on for purposes of application by any party to the proceedings, make an order appointing a fit person to be guardian ad litem of the child to whom the application relates.
2. The guardian ad litem shall be under duty to—
 - (a) safeguard the interests of the child pending the determination of the adoption proceedings;
 - (b) investigate and report to the Court on the facts and circumstances relating to the adoption of the child;
 - (c) make recommendations as to the propriety of making any interim orders or an adoption order in respect of the child; intervene on behalf of the child and arrange for the care of the child in the event of the withdrawal of any consent prescribed by this Act; Children No. 29
 - (d) intervene on behalf of the child and arrange for the care of the child in the event of the withdrawal of any consent prescribed by this Act; and
 - (e) undertake such other duties as the Court may from time to time direct, or as may be prescribed by the rules.
3. Where arrangements for the adoption of any child have been made by an adoption society, neither the society nor any member thereof shall be appointed guardian of the child in relation to the adoption.



4. The appointment of a guardian ad litem shall expire upon the making of a final order by the Court under this Part, unless the Court, having regard to the interests of the child, extends the period of the appointment.
 5. Without prejudice to the generality of subsection (4), where an appeal is lodged against a final order of the Court made under this Part, the Court shall have power to extend the appointment of a guardian ad litem until the date of the determination of the appeal.
11. In matters concerning adoption, custody, and guardianship, both the constitutional and statutory regimes recognize the best interests of the child as the guiding principle in any decision made by a court or tribunal. It is a principle of law that requires the court, where there are two possible interpretations of the law, to adopt the interpretation that best promotes the welfare of the child. These protection principles relating to the best interests of the child are essential for two fundamental reasons. First, they uphold the dignity of the child as a person. Second, they constitute a significant investment in the future generational dividend of a nation such as Kenya. In this context, the principle emphasizes the overall well-being of children in order to ensure the intergenerational continuity of the family unit.
 12. In matters of adoption, guardianship, custody the determination of the best of interest and welfare of the child is broad and of paramount importance as illuminated in the persuasive case of *Gaurav Nagpal v Sumedha Nagpal* 2008(4) R.C.R.(Civil) 928 the court held as follows:

“ 42. ...The Court has not only to look at the issue on legalistic basis, in such matters human angles are relevant for deciding those issues. The court then does not give emphasis on what the parties say, it has to exercise a jurisdiction which is aimed at the welfare of the minor. As observed recently in *Mousami Moitra Ganguli's case*(supra), the Court has to due weightage to the child's ordinary contentment, health, education, intellectual development and favourable surroundings but over and above physical comforts, the moral and ethical values have also to be noted. They are equal if not more important than the others.

43. The word 'welfare' used in Section 13 of the Act has to be construed literally and must be taken in its widest sense. The moral and ethical welfare of the child must also weigh with the Court as well as its physical wellbeing. Though the provisions of the special statutes which govern the rights of the parents or guardians may be taken into consideration, there is nothing which can stand in the way of the Court exercising its *parens patriae* jurisdiction arising in such cases.”

13. Similarly, the Supreme court of India in *Nil Ratan Kundu v Abhijit Kundu* (2008) 9 SCC 413 set out the principles governing the custody of minor children in paragraph 52 as follows: -

“Principles governing custody of minor children

56. In our judgment, the law relating to custody of a child is fairly well settled and it is this: in deciding a difficult and complex question as to the custody of a minor, a court of law should keep in mind the relevant statutes and the rights flowing therefrom. But such cases cannot be decided solely by interpreting legal provisions. It is a human problem and is required to be solved with human touch. A court while dealing with custody cases, is neither bound by statutes nor by strict rules of evidence or procedure nor by precedents. In



selecting proper guardian of a minor, the paramount consideration should be the welfare and wellbeing of the child. In selecting a guardian, the court is exercising parens patriae jurisdiction and is expected, nay bound, to give due weight to a child's ordinary comfort, contentment, health, education, intellectual development and favourable surroundings. But over and above physical comforts, moral and ethical values cannot be ignored. They are equally, or we may say, even more important, essential and indispensable considerations. If the minor is old enough to form an intelligent preference or judgment, the court must consider such preference as well, though the final decision should rest with the court as to what is conducive to the welfare of the minor.”

14. Keeping in view the application by the Applicant, the affidavit evidence of both the Applicant and the legal guardians, together with the inquiry report by the Director of Children Services and the brief history provided by KKPI Adoption Society and in reference to the constitutional imperative under Article 53 of *the Constitution*, the international law on the rights of the child and the provisions of the Children's Act as stated elsewhere in this judgment, the Originating Summons is merited and the same is allowed. Consequently, the following orders shall issue: -
- a. That a declaration is be and hereby made that the applicant LTO be authorized to adopt BN, who shall be henceforth be named as BNK.
 - b. That a declaration be and is hereby made that the Registrar General mandated with the function of the register on Births and Death be ordered to make the appropriate entries in the adopted children register according to reflect BNK to give him legal identity according to Article 63 of *the constitution*.
 - c. That a declaration be and is hereby made of granting leave of travel to the applicant to travel with the minor whenever it is deem necessary and appropriately within or outside the Republic Kenya
 - d. That a declaration be and is hereby made that the Director of Migration and Citizen services within the ministry of foreign affairs be at liberty to issue the necessary travel instruments commonly known as the passport to BNK as per law established.
 - e. That a declaration be and is hereby made that the Deputy Registrar of the High Court do extract an un-redacted to be serve upon the Registrar General and the director of migration and citizenship.
 - f. There shall be no orders as to the costs of this Application.
 - g. It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET VIA CTS THIS 6TH DAY OF MARCH 2026

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R. NYAKUNDI

JUDGE

