



**In re MK, MK & JK (Children) (Adoption Cause E004 of 2024)  
[2026] KEHC 3624 (KLR) (18 March 2026) (Judgment)**

Neutral citation: [2026] KEHC 3624 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
ADOPTION CAUSE E004 OF 2024  
JRA WANANDA, J  
MARCH 18, 2026  
IN THE MATTER OF THE CHILDREN ACT, 2022  
AND  
IN THE MATTER OF ARTICLE 53(2) OF THE CONSTITUTION OF KENYA, 2010  
AND  
IN THE MATTER OF ADOPTION OF M.K., M.K. AND J.K.**

**IN THE MATTER OF**

**JC ..... 1<sup>ST</sup> APPLICANT  
NKK ..... 2<sup>ND</sup> APPLICANT**

**JUDGMENT**

1. The Application before Court is the Amended Originating Summons dated 26/08/2024 filed through Messrs Chanzu Victor & Co. Advocates. The same seeks orders as follows:
  - i. That pending the hearing and determination of the Originating Summons, F.B. of ID No. [...] be appointed as Guardian Ad Litem for M.K, M.K. & J.K, the children.
  - ii. That after the determination of the Amended Originating Summons, the hearing and determination of the Originating Summons, F.B. & T.C.B of ID Nos. [...] & [...] be appointed as Guardian Ad Litem for M.K, M.K. & J.K, the children.
  - iii. That the Applicants J.C. & N.K.K. be authorized to adopt M.K., J.K., and M.K.
  - iv. That the Registrar General be ordered to make the appropriate entries in the Adopted Children Register accordingly to reflect M.K.K, J.K.K & M.K.K.'s legal identity.



- v. That a formal Adoption Order as required by the Children's Act, 2001, Cap. 141 Laws of Kenya do issue in favour of the Applicants.
  - vi. That this Honourable Court do issue any such further orders/directions as it may deem fit and expedient in the interest of the child.
2. In her Affidavit in support of the Application, the 1<sup>st</sup> Applicant deponed that the Applicants got married in the year 2013 and formalized the marriage in 2028, and that they currently reside in Atlanta, Georgia, United States of America (USA) after receiving a good job offer where they wish to bring up the children the subject of these proceedings. She deponed that they previously resided in Kericho, Kenya where they were raising the children since their birth, and that they have been continuously providing for the needs of the children including their school education, that their current occupations are a nurse and a technician (plumber), respectively, in the USA. She urged that their previous occupation in Kenya from the year 2025 were as a nurse at [.....] District Hospital, and a local plumber in [.....], respectively, that the children are her nephews by virtue of being the sons of her sister, who has however been condemned to a Psychiatric facility for a mental condition which she has been suffering from thus rendering her incapable of taking care of the children. She deponed further that the immediate family members have consented to the adoption and that herself and the 2<sup>nd</sup> Applicant (her husband) are law abiding citizens with no criminal records, and that they work and reside in Kericho where they wish to bring up the children.
  3. The Applicants urged further that they do not have any medical conditions that would hinder them from affording the children's quality upbringing, that they have the experience of bringing up children by reason of already being biological parents to 3 children of their own, and that they are committed Christians and promise to bring up the children in a God-fearing setting, and to provide fully for their well-being. She deponed further that they understand their responsibilities as adoptive parents and that the order, if granted, is permanent and hence irreversible, and that they have a stable income to meet the needs of the children. She stated further that they live in a conducive environment, that the Children Officer within their area has assessed and confirmed their suitability, the children have been declared free for adoption by a Registered Adoption Society, and they have satisfied the statutory age limit requirements as they are 39 and 42 years old, respectively. In conclusion, she deponed that all relevant consents had been obtained, and that they have not received or agreed to receive any payment or reward in consideration of the adoption herein.
  4. There are also respective Affidavits sworn by one F.B. and one T.B.C., who introduced themselves as also nephews of the children, and confirmed that their family has consented to the Application herein.
  5. When the matter came up in Court on 24/06/2025, I appointed the said F.B. and one T.C.B., to be the Guardians ad Litem pending determination of the matter.
  6. On the same 24/10/202, I took the oral evidence of 5 witnesses who were led by the Applicant's Counsel, Ms. Aisha, and I also separately interviewed the 3 children.
  7. PW1 was Anthony Kipkurui, who introduced himself as the Children's Officer, Kapseret sub-County, Uasin Gishu County. He reported his findings that two of the children live in Seme but are in school in Kericho, and during holidays, they visit their aunt in Kapseret, Uasin Gishu. He also stated that the bread-winners of the family are the Applicants who are stable financially, and also reported his confirmation that the children are all siblings and the 1<sup>st</sup> Applicant is their aunt, and that the children's mother, although she resides in Kapseret, is mentally challenged and for this reason, the children's fathers are unknown. He testified further that the Applicants are a married couple and live in the United States of America, where the 1<sup>st</sup> Applicant works as a nurse. He conceded that he had never met



the Applicants and was “seeing” them in the virtual video screen in Court for the very first time, but that he had physically met the children’s biological mother.

8. At this point, I noted that PW1 had not satisfactorily executed his duties of properly assessing and reporting back on the fitness of the Applicants to be appointed as adoptive parents as the Report dated 7/02/2025 that he had presented did not contain sufficient information on the Applicants as he had never even met or interviewed them before preparing the Report. I noted that as a result, the Report left out crucial information and left a lot of gaps. In the circumstances, I directed him to conduct a proper assessment and background verification on the Applicants and file a more comprehensive Report within 30 days.
9. PW2 was the 1<sup>st</sup> Applicant. She basically reiterated the matters already deponed in her Supporting Affidavit, and testified that she is a 40 years old Kenyan citizen but in July 2025, she moved to live in the United States of America (USA) as a permanent resident where she now works as a nurse. She also confirmed that she has been married to the 2<sup>nd</sup> Applicant for 20 years, that the children’s mother is her sister, that the 2<sup>nd</sup> Applicant now works as a technician also in the USA, and that once the adoption order is granted, they will enroll the children in school in the USA. She further testified that the 2<sup>nd</sup> Applicant is aged 43 years old, that they have 3 children of their own aged 21, 19 and 11, respectively, and that the children’s mother (her sister), has all along been mentally unstable, and so they do not know the children’s fathers. Regarding her own parents, she stated that they are both deceased.
10. PW3 was the 2<sup>nd</sup> Applicant. He, too, reiterated the matters already stated in his Affidavit, and testified further that he is 43 years old, a Kenyan citizen now living in the USA (Atalanta) working as a technician (plumber), and that he is married to the 1<sup>st</sup> Applicant. He, too, then stated that the children’s mother is mentally unstable, and that he has lived with the children in Kericho here in Kenya. He confirmed that he already has other 3 children with the 1<sup>st</sup> Applicant aged 21, 19, and 11 years old.
11. PW4 was the said F.B. She, too, reiterated the matters already stated in her Affidavit, and testified that she resides in Eldoret, she is single and is employed. She confirmed that the 1<sup>st</sup> Applicant is her sister married to the 2<sup>nd</sup> Applicant, and that in her assessment, the two are fit and suitable to be appointed as adoptive parents. She confirmed her understanding of her duties and responsibilities as a Guardian Ad Litem, and stated that she is the one currently living with the children’s mother.
12. PW5 was the said T.C.B. She, too, reiterated the matters already stated in her Affidavit, and testified that she is 35 years old and resides in Seme, Kisumu County, and that she is married. She, too, confirmed that the 1<sup>st</sup> Applicant is her sister married to the 2<sup>nd</sup> Applicant, and confirmed her understanding of her duties and responsibilities as a Guardian Ad Litem, and undertook to follow-up on the welfare of the children even if they are in the USA, and she remains here in Kenya. It was her further testimony that the Applicants are good Christians, and are also financially stable. In conclusion, she, too, asserted that in her assessment, the Applicants are fit and suitable to be appointed as adoptive parents as they have lived with the children since their birth.
13. It is at this point that I separately interviewed the children. The 1<sup>st</sup> M.K. told me that he is 13 years old, in Class 7 in Kendu Bay, and that they (the children) have lived with the Applicants all their lives in Kericho. He confirmed his willingness to be adopted by the Applicants.
14. The 2<sup>nd</sup> M.K. told me that he is 11 years old, in Class 6, also in Kendu Bay, and he, too, confirmed that he had lived with the Applicants all his life in Kericho, and stated that he loves them. He, too, confirmed his willingness to be adopted by the Applicants.
15. J.K. told me that he is 7 years old, in Class 4 in Kericho. He then stated that he lives with his other aunt, E and she, too, confirmed that the 1<sup>st</sup> Applicant is also her aunt, and he knows her children. He



referred to the 2<sup>nd</sup> Applicants as his uncle and he, too, confirmed his willingness to be adopted by the Applicants.

16. After the hearing, upon noting the insufficiency of the supporting documents supplied, including absence of documents confirming the status of the Applicants' residence in the USA, and also their places of work and income, as I had directed the Children's Officer (PW1), I similarly directed the Applicants to file a Further Affidavit giving such further information. When the matter came up in Court on 24/12/2025, Ms. Aisha confirmed to me that the directions had been complied with, and in the circumstances, I fixed the matter for Judgment.

### Determination

17. Regarding litigation concerning minors, Article 53(2) of *the Constitution* stipulates the over-arching principle which must apply whenever any decision concerning a child is to be made to be the "best interests" of the minor. It provides that:

"A child's best interests are of paramount importance in every matter concerning the child"

18. The said provision is echoed in Section 8(1) of the Children's Act, No. 29 of 2022.

19. Regarding the law of adoption in Kenya, the relevant provisions are to be found in Part XIV of the Children's Act, 2022 which provides as follows:

" 183.

- (1) Subject to this Act, the High Court may, on an application made in the prescribed form, make an order, in this Act referred to as "adoption order", authorising an applicant to adopt a child.
- (2) 2) All proceedings under this Part shall be heard and determined in chambers, and the identity of the child and the applicants shall be kept confidential.
- (3) In this Act, adoption means local, kinship and foreign adoption
- (4) For the purposes of this Part—
  - (a) "kinship adoption" has the meaning assigned to it in section 2;

.....

184.

- (1) A person shall not commence any arrangements for the adoption of a child unless —
  - (a) the Council, in accordance with the rules, has declared the child free for adoption; and
  - (b) the child has attained the age of six weeks.

.....

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.

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

.....



- (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

.....

187

- (1) The Court may dispense with any consent required under section 186(8) paragraphs (a), (b) and (c) if the Court is satisfied that—
- a. ....;
  - b. ....; or
  - c. in any other case, except in respect of the consents required under section 186(8)(c) and (9), the person whose consent is required cannot be found or is incapable of giving his or her consent, or that his or her consent has been unreasonably withheld.

20. In this case, it has been demonstrated that the Applicants are a married couple. They have 3 children of their own, aged 21, 19 and 11 years old, and there is evidence that they have lived with the children for a good part of the children’s lives before the Applicants moved to the USA, if not since their birth.
21. Section 2 of the Act defines “kinship adoption” as the adoption of a child by a person who is a relative of the child. In this case, the female Applicant is the aunt to the children (their mother’s sister). Section 193(1) provides that a kinship adoption order may only be made in favour of a relative of the child and Section 2 provides that “a relative” means, for the purpose of adoption, “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”. As such, the proposed adoption of the children herein is a kinship adoption.
22. In this case, the Report dated 7/02/2025 and the Supplementary Report dated 20/07/2025 submitted by the Directorate of Children’s Services, which give the particulars of the Applicants as the prospective adoptive parents, and also particulars of the biological mother have been filed. The Reports state that interviews by the Children’s office were conducted with relevant persons and site visits made before approving the proposal for adoption of the minors. The Reports also give relevant background information about the Applicants and also relevant particulars concerning the entire prospective adoption herein. In the end, the Reports recommend that the Application be allowed.
23. The Reports also state that the biological mother of the children is, and has at all material times, been mentally unstable and that for this reason the children’s fathers remain unknown to date, and she also, as a result, lacks the capacity to take care of the children, or grant her personal consent to this



- Application. Her own parents (also parents of the 1<sup>st</sup> Applicant as the two are siblings), are also reported to be both dead, and thus the consents on record are those from her two sisters, the said T.C.B and F.B., the two appointed Guardians Ad Litem. Regarding the children’s mother’s alleged mental challenges, indeed, there is on record, a copy of the letter dated 19/08/2024 from the Moi Teaching and Referral Hospital (MTRH) confirming that she, S.C.B, has been suffering a mental illness, and was transferred there from the Mathare Mental Hospital, Nairobi. The Report then states that although she is now mentally unstable “she is still dependent on relatives for almost every activity”.
24. From the children’s respective Certificates of Birth on record, the first M.K. was born on 1/05/2013, the second M.K. on 15/06/2014, and J.K. on 1/05/2017. The first M.M. is therefore currently about 13 years of age, the second M.K. is about 12 years of age, and J.K. is 9 years. On the other hand, from their National Identity Cards, J.C. (1<sup>st</sup> Applicant) was born on 17/01/1985, while N.K.K. (2<sup>nd</sup> Applicant) was born in 1982. J.C. is therefore currently 41 years of age while N.K.K is 44 years old. The Applicants therefore meet the requirement of Section 186(2)(a) and (b) which stipulate that the Court shall not make an adoption order unless “the applicant, or both of the applicants in a joint application, is more than twenty-one years older than the child”, and “the Applicant has attained the age of 25 years, but is not above the age of 65 and the Applicant, or both of the Applicants in a joint application, are more than 21 years older than the child”.
  25. In any event, by virtue of the proviso in Section 186(3), these age restrictions do not apply in this case since one of the joint Applicants herein, J.C. is a relative (aunt) of the children.
  26. Also on record are copies of the Applicants’ Kenyan National Identity Cards, Passports, Certificate of Marriage indicating that they formalized their marriage on 23/03/2018, Certificates of Good Conduct, USA Permanent Resident Cards. The 1<sup>st</sup> Applicant has also presented her employment letter of appointment in the USA and also formerly in Kenya, and also pay-slips indicating her earnings in the USA, and also for her former Kenyan nursing job. They have also supplied copies of school account statements and reports demonstrating that they have been paying school fees for the children. Copies of the Guardians ad Litem’s and also their siblings National Identity Cards are also on record. There is also a copy of a Sale Agreement indicating acquisition of a parcel of land by the Applicants where it is said their matrimonial home is situated.
  27. There is also a consent to the adoption from the first M.K, and also from the Applicants’ other children, and also copies of their Certificates of Birth.
  28. From my interview with the children and my observation in Court, I formed the opinion that they appeared to have bonded well. They also satisfied me that during the period the children lived with the Applicants, they enjoyed good parental care and protection, and their welfare was well safeguarded. Each of the children also informed me that he was happy to be adopted by the Applicants. The Applicants have therefore, in my view, demonstrated that they have the psychological and emotional capacity as well as the material resources to raise the children in a loving home environment, whether here in Kenya or in the USA where they intend to relocate the children and live with them.
  29. After a careful assessment of the evidence herein, and noting that the children have all along been in the custody and care of the Applicants, I form the opinion that it would be in the best interest of the children to allow them to be adopted by the Applicants.
  30. There are however some evident requirements that the Applicants have omitted, and which they are required to comply with under the *Children Act*, 2022.
  31. For instance, regarding the Adoption Society, namely the Child Welfare Society of Kenya, although there are some consents and medical status questionnaire signed or issued on its letter-head, I have



not come across its formal Report as required under Section 185(2)(b) and (3) above, nor does there seem on record, its formal Certificate declaring the children free for adoption as required under Section 184(1)(a) above.

32. I also note that the Guardians ad Litem, F.B. and T.C.B., have not filed in Court a Report as envisaged under Section 188(2) giving their latest assessment, comments and observations over the whole Adoption process undertaken so far.
33. Further, no names of Legal Guardians for the children to be appointed upon determination of this Cause under the provisions of Section 195, has or have been presented.
34. I will therefore direct the Applicants to comply with these above requirements before I finally determine this matter.

### Orders

35. In the circumstances, I direct and order as follows:
  - i. Although I have registered my satisfaction with the Application for adoption herein, which I find to be merited and I am minded to grant, I direct that the Applicants, within a period of 30 days from the date hereof, do first comply with the following:
    - a. Procure from the subject Adoption Society, namely the Child Welfare Society of Kenya, the formal Report required under Section 185(2)(b) and (3) of the Children's Act, 2022, and also the Certificate declaring the children as free for adoption as required under Section 184(1)(a) above or, if not the Society that handled this matter, the Adoption Society that did so.
    - b. The Guardians ad Litem, F.B. and T.C.B., file in Court a Report as envisaged under Section 188(2) of the *Children Act*, 2022 giving their general assessment, comments and observations over the whole Adoption process undertaken so far, including giving proposals and recommendations, if any, on any issue in connection thereto including, but not limited to, suitability of the Applicants to adopt the children.
    - c. The Guardians ad Litem, FB and TCB, if they are willing to be also appointed the Legal Guardians of the children upon determination of this Cause under the provisions of Section 195 of the *Children Act*, 2022, file Affidavits to that effect, and if not, other Legal Guardians be proposed and to file such Affidavits.
  - ii. Once the above are filed, the Court shall finally determine this Adoption Cause.
  - iii. As it has been demonstrated that the children's biological mother, S.C.B., suffers from a mental illness, the requirement for her consent to the Application herein is hereby dispensed with under the provisions of Section 187(1)(c) of the Children's Act, 2022.

**DELIVERED, DATED AND SIGNED AT ELDORET THIS 18<sup>TH</sup> DAY OF MARCH 2026**

.....

**WANANDA JOHN R. ANURO**

**JUDGE**

Delivered in the presence of:

Ms. Aisha for the Applicants



Court Assistant: Brian Kimathi

