



**In re Baby JLW (Minor) (Adoption Cause E089 of 2025)
[2025] KEHC 5378 (KLR) (Family) (30 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 5378 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

FAMILY

ADOPTION CAUSE E089 OF 2025

CJ KENDAGOR, J

APRIL 30, 2025

IN THE MATTER OF THE CHILDREN ACT

IN THE MATTER OF BABY JLW – (MINOR)

AND

IN THE MATTER OF

IN THE MATTER OF CRW APPLICANT

JUDGMENT

1. Before this Court is the application dated 27th March, 2025. The Applicant CRW is seeking to be authorized to adopt Baby JLW hereinafter referred to as (“the Child”), and upon adoption, the Child is to be known as JLW. The Applicant has proposed that EEL be appointed as the Child’s legal guardian upon granting of the adoption orders.
2. The Applicant is not married and is an American citizen, as is evidenced by a copy of her passport. She is a therapist by profession. Her financial capability and ability to provide for the Child are evidenced by her personal bank account statements and tax returns, as stipulated in the social inquiry and home report dated 25th February 2025, issued by the Change Trust Adoption Society. Her health status is good, as evidenced by her medical report.
3. She has indicated that the adoption process is meant to grant her parental responsibility over her genetic and biological Child, who was born out of gestational surrogacy.
4. The report from the Ministry of Labour and Social Protection, State Department for Social Security and Protection, Directorate of Children’s Services (Nairobi County), dated 23rd April, 2025, indicates that the Child is male and 4 months old. He is Kenyan and American, and his biological parent is CRW.



5. The Child was born at Coptic Hospital by the gestational carrier in a gestational surrogacy where ova and the gametes were harvested from CRW and a sperm bank and implanted into the surrogate mother's womb through In Vitro Fertilization. Immediately upon birth, the Child was handed over to JLN in accordance with the gestational carrier agreement dated 7th May, 2024. The Child was declared free for adoption on 26th February, 2025 by Change Trust Adoption Society vide freeing Certificate Serial Number 00779.
6. The Applicant testified and stated that she needed to conduct the adoption process to gain parental responsibility for her genetic and biological Child who was born through gestational surrogacy.
7. The proposed Child's legal guardian is a friend of the Applicant. She is financially stable and has expressed her commitment to take on the role of legal guardian when required. She verified this via a guardianship confirmation dated 27th February, 2025 in California, affirming her commitment.
8. The surrogate mother willingly agreed to surrender the Child to the Applicant immediately upon birth, and she honoured this commitment. During the Adoption hearing, she openly expressed her decision to relinquish all parental rights to the Child, demonstrating her resolute intent to fulfil the Agreement. She signed a consent form.
9. Before submitting the Adoption Application, the Applicant initiated a custody application at the Nairobi Children's Court, referenced as Children Case No. Misc. E015 of 2025. This custody application was duly reviewed and subsequently granted by Hon. J. Kibosia, the Children's Court Magistrate, a decision that was both appropriate and justified under the circumstances.
10. This is a case of a Child in need of urgent medical care as evidenced by the Doctor's report from Gertrude's hospital for admission for elective surgery/procedure. The Child was already taken to the USA for this specialized medical attention. He was presented during the adoption hearing and the Applicant stated that the Child is fairing on well.
11. Surrogacy agreements are relatively new within the Kenyan legal system. However, these arrangements are gaining traction, and Kenyan Courts must address the issues that arise from them.
12. In the matter regarding Baby TDL [2014] eKLR, a case that was directly comparable to the present case, Hon. Justice Musyoka held as follows:

“...Legally surrogacy arrangements are valid and have been upheld in other jurisdictions. The Kenyan state has been slow in passing legislation to deal with surrogacy arrangements, that however should not in my view affect the legality of such arrangements so long as they are entered into freely by consenting adults and are in the best interests of the Child the subject of the arrangements. In my view the Child in this case will not be prejudiced in any way, and the present arrangements are in his best interests.” (own emphasis)
13. In *JLN & 2 Others v Director of Children's Services and 4 Others* [2014] eKLR Hon Justice Lenaola (as he then was) observed as follows:-

“Currently there is no law in Kenya regulating surrogacy arrangements. It is because of lack of a legal regime that the parties found themselves in such a situation. But even where there is no legal regime, the court or any persons dealing with the issues must in accordance with Article 57 of *the Constitution*, decide the issue on the basis of the best interests of the Child.....”
14. In light of the best interests of the Child principle provided for under Article 53 (2) of *the Constitution* of Kenya, Sections 8 (1), (2) and (3) of the Children's *Act No. 29 of 2022* and the 1st Schedule of the



Children's [Act No. 29 of 2022](#), this Court has an obligation to prioritize the Child's best interests in making decisions touching on him.

- a. Article 53 of [the Constitution](#), 2010 states that a Child's best interests are of paramount importance in every matter concerning the Child.
- b. Sections 8 (1), (2) and (3) of the Children's [Act No. 29 of 2022](#) provides 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 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.
- c. The First Schedule as provided for under Section 8 (1) of the Children's [Act No. 29 of 2022](#) provides best interests considerations to be as follows:
 1. The age, maturity, stage of development, gender, background and any other relevant characteristics of the Child.
 2. Distinct special needs (if any) arising from chronic ailment or disability.
 3. The relationship of the Child with the Child's parent(s) and/or guardian(s) and any other persons who may significantly affect the Child's welfare.
 4. The preference of the Child, if old enough to express a meaningful preference.
 5. The duration and adequacy of the Child's current living arrangements and the desirability of maintaining continuity.
 6. The stability of any proposed living arrangements for the Child.
 7. The motivation of the parties involved and their capacities to give the Child love, affection and guidance.
 8. The Child's adjustment to the Child's present home, school and community.
 9. The capacity of each parent or guardian to allow and encourage frequent and continuing contact between the Child and the other parent and/or guardian (s), including physical access.



10. The capacity of each parent and/or guardian(s) to cooperate or to learn to cooperate in Child care.
 11. Methods for assisting parental and/or guardian cooperation and resolving disputes and each parent's/guardian's willingness to use those methods.
 12. The effect of the Child if one parent/guardian has sole authority over the Child's upbringing.
 13. The existence of domestic abuse between the parents/ guardian(s), in the past or currently, and how that abuse affects the emotional stability and physical safety of the Child.
 14. The existence of any history of Child abuse by a parent and/or guardian(s); or anyone residing in the same dwelling as the Child.
 15. Where the Child is under one year of age, whether the Child is being breastfed.
 16. The existence of a parent's(s) or guardian's(s) conviction for a sex offence or a sexually violent offence under the *Sexual Offences Act*.
 17. Where there is a person residing with a parent or guardian, whether that person; -
 - a. Has been convicted of a crime under this Act, the *Sexual Offences Act*, the *Penal Code* or any other legislation.
 - b. Has been adjudicated of a juvenile offence which, if the person had been an adult at the time of the offence, the person would have been convicted of a felony.
 18. Any other factor which may have a direct or indirect effect on the physical and psychological well-being of the Child.
15. The report from the Ministry of Labour and Social Protection State Department for Social Security and Protection Directorate of Children's Services (Nairobi County), the report from the Change Trust Adoption Society, the guardian ad litem and the proposed legal guardian indicate that the Child has bonded well with the Applicant and that he will be well taken care of in her care and custody.
 16. The Surrogacy Agreement in this case is squarely detailed. The surrogate mother has not only signed a consent form but also attended Court, where her voluntary consent was formally acknowledged.
 17. In evaluating the Child's best interests, as mandated by *the Constitution*, it is crucial to consider the potential consequences of the Court denying the current application due to a lack of legislative framework. Considering the existence of an explicit agreement and the verification from both the Directorate of Children Services and the Adoption Agency that the surrogacy process, as well as the subsequent adoption application, are undertaken in good faith, and noting that there are no indications of circumstances that could jeopardize the Child's welfare, this court prioritizes the Child's well-being and hereby permits the adoption. This process will enable the biological parent to adopt the Child and thus acquire parental rights and responsibilities.
 18. In the circumstances, I allow the Originating Summons dated 27th March, 2025 and make the following orders:
 - a. The Applicant CRW is authorized to adopt the Child known as JLW.



- b. Upon adoption, the Child shall retain the name JLW.
- c. The Child is declared a Kenyan Citizen by birth and is entitled to all rights and benefits under *the Constitution* of Kenya and all applicable laws.
- d. EEL is appointed as the Legal Guardian of the Child.
- e. The Registrar General is directed to make the relevant entries in the Adopted Children's Register in respect of the Child.
- f. The Guardian ad litem is hereby discharged.

19. It is so ordered.

DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 30TH DAY OF APRIL, 2025.

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C. KENDAGOR

JUDGE

In the presence of:

Court Assistant: Beryl

Ms. Atsieno, Advocate for the Applicant.

