



REPUBLIC OF KENYA



KENYA LAW
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**In re MM (A Child) (Adoption Cause E009 of 2024)
[2025] KEHC 5534 (KLR) (30 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 5534 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT EMBU

ADOPTION CAUSE E009 OF 2024

RM MWONGO, J

APRIL 30, 2025

IN THE MATTER OF THE CHILDREN ACT CAP. 141 OF THE LAWS OF KENYA

IN THE MATTER OF THE ADOPTION OF MM (A CHILD)

IN THE MATTER OF

DNN APPLICANT

JUDGMENT

The Application

1. By an originating summons dated 22nd November 2024, the applicant is seeks the following orders from this court:
 1. That she be authorized to adopt Baby MM;
 2. That the consent of the biological parents be dispensed with since the child was abandoned;
 3. That upon making the adoption order, the child be known as MIW;
 4. That the Registrar General do make the appropriate entry of MIW in the Adopted Children's Register;
 5. That the child MIW be presumed to be a Kenyan citizen born in Kenya; and
 6. That BNM be appointed Legal guardian of the child MIW.
2. The originating summons was accompanied by a statement by the applicant in support of the application. She stated that she is a civil servant working in Embu County. She has one biological son and has never been married. She has not been convicted on any offence listed in the 3rd schedule of the Act and she has a Police Clearance Certificate to show for this. It was her statement that she has not given or received money in exchange for consideration of adoption. That she is desirous of adopting



MM and once this order is issued, the name of the child be changed to MIW and entered as such into the register of adopted children.

The applicant's background

3. The applicant is a 51-year-old female who is unmarried. She lives and works as an Accountant in Embu County. She has one biological son who relates well with the child. She had hoped to have more biological children but owing to a medical condition, she was not able to conceive. She opted to adopt a child and MM was placed under her care.
4. The applicant understands her responsibility as an adoptive parent. She has bonded with MM, and her son also regards MM as his sibling. A home visit with the applicant in revealed that the applicant lives in a spacious 3-bedroomed house which is tastefully furnished. The house is well serviced with the necessary amenities. It is a safe and convenient place to raise the child.
5. The applicant understands her obligations as an adoptive parent and she is confident that she can give the child a decent life upon adoption.

Background of the child

6. On 10th October 2021, the child was born to her biological mother, one TM (a minor) in Kakamega County General Hospital. The child's biological father is a close cousin of the biological mother. This incestuous relation is frowned upon; therefore, it was taboo to keep MM in the community. The biological mother and her grandmother decided to give the child up for adoption since she could not be raised within their community.
7. It was then that the Child Welfare Society of Kenya (CWSK) took up the matter and placed the child in one of their safe facilities within Kakamega County. This was done through a committal order by the Children's Court in Kakamega under Care and Protection Case No.10 of 2022 on 24th June, 2022. The CWSK counselled the family but they confirmed that they wanted to give the child up for adoption and they signed the necessary consents. Upon due assessment, the CWSK determined that Adoption would serve the child's best interests as she will be provided with a family and she will acquire a sense of identity. The child was then declared free for adoption on 11th May 2023. The child was placed under the applicant's care on 22nd July 2023 and has remained under her care to date.

Guardian *ad litem*

8. The originating summons application was accompanied by Chamber summons of even date seeking that PWN be appointed as Guardian *ad litem*. The application was allowed through an order of the court issued on 12th February 2025 and PWN was appointed Guardian *ad litem* in accordance with section 188(1) of the [Children Act](#). The court also ordered that the Secretary of Children's services do file a home study report and the appointed Guardian *ad litem* do file her report on MM.

Report by the Guardian *ad litem*

9. In accordance with section 188(2)(b) of the [Children Act](#), the Guardian *ad litem* filed a confidential report dated 14th March 2025 in court. In it, she confirmed her understanding of the case. She also highly recommends the applicant as an adoptive parent to the child. She stated that the applicant and her biological son relate well with the child, who is also developing well. She visits the applicant's home often and she noted that the child is comfortable and happy. According to her, the applicant and her extended family members relate very well with the child. She vouched for the applicant as an adoptive parent, and, in any event, the applicant understands her responsibility and obligation in that regard.



Report by the Secretary, Children Services

10. Section 184(4) of the [Children Act](#) requires that the Office of the Secretary of Children Services shall monitor and submit reports to the courts on the wellbeing of a child who is subject to adoption proceedings. In compliance with this provision, a report dated 17th February 2025 was filed. The report stated that the applicant is financially stable. Following a visit to the applicant’s home, it was established that she lives in a safe and comfortable home which is conducive for raising the child. The report also details that the applicant understands her obligations as an adoptive parent according to the [Children Act](#). The child has bonded well with the applicant and her family. The applicant is committed to providing for the best interest of the child.

Suitability of the applicant for adoption

11. Section 186(1) and (2) of the [Children Act](#) provides for who may adopt a child, as follows:

- “(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.”

12. The applicant fulfills the conditions set out in these provisions since she is a sole applicant who is within the allowable age bracket and is 25 years older than the child. She is also a Kenyan citizen; therefore, this is a local adoption.

Best interest of the child

13. Article 53(2) of the [Constitution](#) provides that: A child’s best interests are of paramount importance in every matter concerning the child. Section 4(2) of the [Children Act](#) also elevates the best interest of the child and provides:

“Despite subsection (1), a provision in another legislation on children matters may prevail if it offers a greater benefit in law to a child.”

Report of the Child Adoption Society

14. Section 185(2) of the [Children Act](#) requires that an application for adoption be supported by a report of a duly registered adoption society. In this case the CWSK filed a detailed report dated 12th February 2025 regarding Baby J, together with a certificate declaring the child free for adoption in accordance with section 156(1) of the [Children Act](#) and the Adoption Regulations. These documents were presented to Court in compliance with Section 187(2) and 185(4)(b) of the [Children Act](#).
15. The circumstances of the case are that the child could not be raised in the community where she was born because of the incestuous relationship between her parents. The CWSK followed due process and obtained the necessary consents to enable adoption. The report recommended that it was in the best



interest of the child to give her up for adoption, this meeting the child's need for family protection, love, security and a sense of identity.

Conclusion and Disposition

16. The documentation presented in court regarding the adoption of MM qualifies her adoption by the applicant. The applicant also meets the legal requirements to enable her to adopt the child.
17. In this court's view, it is in the best interest of the child that she be adopted by the applicant.
18. Accordingly, the prayers sought by the applicant are granted as follows:
 1. This adoption is deemed to be a local adoption;
 1. The applicant be and is hereby authorized to adopt MM;
 2. Henceforth, MM shall be known as MIW;
 3. The Registrar General shall make the appropriate entry of MIW in the Adopted Children's Register;
 4. The Registrar shall issue to the applicant a certified copy of the entry pursuant to Order 4 herein in the Adopted Children Register, upon payment of the prescribed fee;
 5. The child MIW is presumed to be a Kenyan citizen born in Kenya;
 6. The Guardian *ad litem* is hereby discharged; and
 7. BNM is hereby appointed Legal guardian of the child MIW.
19. Orders accordingly.

DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 30TH DAY OF APRIL, 2025.

R. MWONGO

JUDGE

Delivered in the presence of:

DN – Applicant

PWN – Guardian *ad litem*

B – Legal Guardian

Francis Munyao - Court Assistant

