



REPUBLIC OF KENYA



**In re EK and JM (Minors) (Adoption Cause E005 of 2024)
[2025] KEHC 4861 (KLR) (25 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 4861 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
ADOPTION CAUSE E005 OF 2024**

JRA WANANDA, J

APRIL 25, 2025

**IN THE MATTER OF THE CHILDREN ACT NO. 29 OF 2022
IN THE MATTER OF AN APPLICATION FOR KINSHIP ADOPTION
ORDERS BY RNG AND EK OVER THE MINORS EK AND JM**

JUDGMENT

1. The Application before Court is the Originating Summons dated 04/09/2024 filed through Messrs C Ruto & Co. Advocates. The orders sought are as follows:
 - i. That the Report prepared by Little Angels Network on the declaration of the minors free for adoption be deemed as duly filed.
 - ii. That LWK and MW be appointed as Guardians ad Litem for purposes of this Adoption.
 - iii. That the Applicants, RNG and EK be authorised to adopt the minors EK and JM.
 - iv. That as a result of said adoption, the Applicants, RNG and EK, be granted full actual and legal custody over the minors EK and JM as well as parental responsibility over said minors.
 - v. That the Applicants be granted leave to travel with the minors outside the jurisdiction of the Republic of Kenya.
 - vi. That the Court do issue further orders as may be deemed fit and just in the best interest of the children herein.
2. For ease of reference, I will refer to the said RNG as the “1st Applicant” and the said EK as the “2nd Applicant”.
3. In their jointly sworn Supporting Affidavit, the Applicants deponed that they are Kenyan citizens aged 44 and 59 years, respectively, that they met sometime in or about March 2018 and started living together in or about April 2020 within Uasin Gishu County and reside there with their children to date. They deponed further that they solemnized a marriage by conducting a wedding on 12/12/2022, they are a normal heterosexual couple, when they met, each had children from previous relationships,



the 1st Applicant had a son born in December 2007 while the 2nd Applicant had the minors the subject hereof, born in July 2012 and March 2015, respectively, and they were later blessed with one child of their own born in October 2019. The 2nd Applicant deponed that he sired the minors the subject hereof when in a marriage with one LNM who unfortunately passed away on 2/01/2016. They deponed further that the 1st Applicant is a nurse practicing as such at [.....] hospital whereas the 2nd Applicant is a Chemical Processing Technologist at [.....] factory, and they both have stable incomes and are capable of taking care of all the needs of the minors. They also deponed that the 1st Applicant has in fact secured a more lucrative job opportunity in Lubock City, Texas State in the United States of America (USA) where she intends to go and live with the 2nd Applicant and the children. They also stated that they are Christians and intend to bring up the children in that religion with good morals, they have always catered for the children's needs, including medical and educational needs, that the Little Angels Network Society interviewed them and prepared sperate Reports clearing the minors for adoption, and that the proposed Guardians ad Litem have agreed to be appointed to that role.

4. On 28/09/2024, I allowed prayer (2) of the Application and appointed the said LWK and MW to be the Guardians ad Litem pending the hearing and determination of this matter.
5. On 05/02/2025, the Court took the oral evidence of 6 witnesses who were led in their evidence-in-chief by the Applicants' Counsel, Ms. Ruto. I also personally interviewed the 2 minors.
6. PW1 was Joel Kipkosgei Keino who introduced himself as the Sub-County Children's Officer, Uasin Gishu County. He stated that he is the one who prepared the Social Inquiry Report dated 05/01/2025 and that his findings were that the Application herein is merited, that he visited the Applicants' home and found it fit for the minors and that it is in their best interests that they be adopted. He also stated that the minors are the biological children of the 2nd Applicant and that their biological mother is deceased.
7. I then interviewed the 2 minors beginning with JM. He stated that he is 12 years old and in class 7 in [.....] school as a day scholar, and that he wants to be adopted by the Applicants. He stated that the Applicants are his father and step-mother, that his biological mother died, and that he was born on 13/07/2012. He stated that they now want RNG to be their legal mother. The 2nd minor, EK stated that he is 10 years old and a pupil at [.....] school located in Webuye, the same as JMK. He stated that they live with their father, EK, in Webuye and their step-mother, RNG lives in Eldoret and they see her when they come to Eldoret. He described RNG as a good mother, and stated that they love her and he wants to be adopted by the Applicants. He stated further that the Applicants have other children, one is older than them while one is younger, i.e., one is about 16 years old and the other is about 5 years old.
8. PW2 was the 1st Applicant, RNG. She testified that she is a nurse at [.....] Hospital and the 2nd Applicant is her husband whom she wedded on 12/12/2022 and she has 2 children of her own. She testified that she lives in Eldoret because of work while her husband lives in Webuye with the children, they have been married for 7 years and they go to church regularly. She stated that being a nurse, she may get opportunities abroad (USA) and she wishes to go there with the family. In response to questions from the Court, she stated that the children's biological maternal grandparents were also interviewed and are agreeable to the adoption, a fact which she stated, was also captured in the Report filed herein.
9. During to time constraints, the hearing was adjourned. The rest of the witnesses then testified on 13/12/2024.
10. PW3 was the 2nd Applicant, EK. He stated that the 1st Applicant is his legally married wife with whom they have 1 biological child, that he was married before to one LNM under customary law who however



passed on in January 2016 and with whom he had 2 children, the subject minors herein. He testified further that his current wife, the 1st Applicant, also had her own 1 child, that he has been married to the 1st Applicant for 7 years, and he is gainfully employed and provides for the children. He, too, stated that the minors' maternal grandparents are agreeable to the adoption.

11. PW4 was Caroline Akinyi Okuta, who testified virtually and stated that she is a social worker at Little Angels Network. She testified that she interviewed the Applicants on 14/02/2024 and assessed their homes both in Webuye and Eldoret. She described the Application as one for a kinship adoption by the biological father of the minors and their current step-mother as the biological mother died. She stated that during school, the minors stay with their father in Webuye and during holidays, they stay with their mother in Eldoret. She testified that they also interviewed the minors' maternal grandparents and verified that they are agreeable to the adoption and they also signed the consents dated 27/03/2024 and filed herein. She also stated that one of the children being above 10 years old, also signed a consent. She testified that the Little Angels Society declared the children to be free for adoption and she then displayed to the Court what she termed the Society's original Certificate of Registration.
12. PW5 was LWK who also testified virtually and stated that he is the 2nd Applicant's younger brother and the 1st Applicant is the 2nd Applicant's wife. He testified that he has known the minors since they were born and that the 2nd Applicant is their biological father. He also stated that the Applicants have taken good care of the minors, that the 1st Applicant has been a good mother, that he (PW5) agreed to be appointed the minors' Legal Guardian and he is aware that in case the Applicants are not there, he will step in and cater for them. He stated that currently, he lives in Texas in the USA where he has been for the last 8 months with his wife, he speaks with the minors regularly, his wife has also agreed to be appointed a Guardian to the minors and they know her and call her "aunty". He confirmed his knowledge that the Applicants will also be relocating to the USA and stated that the Applicants' home will be only about 6-hour drive from his own. He then undertook to follow-up on the welfare of the minors and ensure that they are well taken care of. Responding to a questions from the Court, he stated that the last time he saw the minors physically was when he was in Kenya in April 2024. He also confirmed that he signed consent.
13. PW6 was MW. She, too, testified virtually and stated that she is PW5's wife. She stated that the 2nd Applicant is her brother-in-law and the 1st Applicant, his wife, and that she, too, has known the minors since they were born. She stated that since the minors' mother died, she is the one who took the minors and lived with them, and that she handed them over to the Applicants in 2018. She supported the Application and stated that she knows her role as a Guardian and that should the Applicants die, she will step in and take over parental responsibilities of the minors and that she, too, has signed a consent herein. She, too, stated that she currently lives in Texas (USA) where she works as a nurse and where her husband (PW5) also works at the same hospital as she. She, too, stated that she last time saw the children physically was in April 2024 when she was still in Kenya. In conclusion, she stated that the minors know her very well.
14. After close of the hearing, the Applicants' Counsel filed the written Submissions dated 12/03/2025.

Determination

15. The issue for determination herein is "whether the Applicants should be allowed to adopt the children the subject hereof".



16. 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 child. It provides that:

“ A child’s best interests are of paramount importance in every matter concerning the child”

17. The said principle is echoed in Section 8(1) of the *Children’s Act*, No. 29 of 2022.

18. 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) 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.
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- (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
.....”

19. Section 2 of the Act then defines "kinship adoption" as "the adoption of a child by a person who is a relative of the child". Section 193(1) provides that a kinship adoption order may only be made in favour of a relative of the child. Section 2 also provides that for the purposes of adoption, a relative means:

" 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".
20. The 2nd Applicant being the children's biological father, the Application herein is therefore for a "kinship adoption" and is permitted under the Children Act.
21. Regarding merits of the Application, I have read the Report dated 5/01/2025 submitted by the Directorate of Children's Services and which gives the particulars and background information of the Applicants as the prospective adoptive parents. The Report states that interviews by the Children's office were conducted with the Applicants, and observations made in respect to the Applicants' own/ other biological children and the children the subject hereof. The Report also states that the Children's officers visited and inspected the Applicants' home setting in Eldoret, whose environment they found to be child-friendly and conducive for the children's mental, social and physical growth. The Report also returns a favorable assessment regarding the Applicants' financial ability, confirms the arrangement as being one of "kinship adoption" and also confirms that the children have been declared free for adoption. In the end, the Report recommends that the adoption be allowed.
22. Also before Court is the Pre-Placement Report dated 17/05/2024 from Little Angels Network, the Adoption Society. The Certificate Serial No. xxxxxx dated 17/05/2024 issued by the Adoption Society declaring the child free for adoption is also attached thereto. The Report's methodology is similar to the one from the Directorate of Children's Services and indicates that besides the Eldoret home, the Society's representatives also visited and inspected the 2nd Applicant's residence in Webuye. It also indicates that the Society's representatives conducted interviews with the Guardians and also that referees cited by the Applicants' were contacted and confirmed the Applicants as fit to adopt the children. The Report then returns similar findings as the one from the Directorate of Children's Services and in the end, it, too, recommends that the adoption be allowed.
23. I also have before me the Report dated 12/03/2025 filed by the Guardians ad Litem whereof they basically allude that since their appointment, they have observed the children's well-being and development and have also conducted assessments on the Applicants' commitment and capability to provide for the children. In the end, they also described the Applicants as fit and suitable persons to adopt the children and stated that the adoption is in the best interests of the children.
24. Also on record and which I have also carefully perused are copies of the Certificates of Birth for the children the subject of this adoption, the Applicants' National Identity Cards and Passports, Applicants' Certificate of Marriage indicating that they wedded on 12/12/2022, employment salary pay-slips, medical reports, and also respective Clearance Certificates from the National Police Service indicating no previous criminal records on the part of the Applicants. There are also on record copies of the two Guardians' National Identity Cards and Passports, consents signed by them, and other documents. I have also perused the consents signed by the children's maternal grandparents and their National Identity Cards.



25. From the children's Certificates of Birth on record, JM was born on 13/07/2012. He is therefore about 13 years of age. On her part, EK was born on 6/03/2015. He is therefore about 10 years old. On the other hand, from their National Identity Cards and/Passports, the 1st Applicant was born on 23/03/1980 while the 2nd Applicant was born on 12/10/1965. The 1st Applicant is therefore approaching 45 years in age while the 2nd Applicant is about 60 years old. As already cited above, under Section 186(2)(b) of the *Children's Act*, 2022, it is stipulated that the Court shall not make an adoption order "unless 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". The Applicants therefore meet this age threshold.
26. In any case, even if they had not met the age threshold, sub-section (3) of Section 186 which provides that "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" would still give them a safe refuge.
27. Since as aforesaid, the Reports on record also indicate that the Applicants have, together, been living with the children for about 5 years now, and the 2nd Applicant, as the biological father, since they were born, the Applicants have definitely during this period extended parental care and protection to the children, and have safeguarded their welfare. The Applicants have, in my view, therefore demonstrated that they have the psychological and emotional capacity as well as the material resources to raise the children in a loving home environment.
28. As aforesaid, I also interviewed and gave the 2 children the opportunity to express their opinion on the adoption. They both informed me that they are happy, ready and willing to be adopted by the Applicants.
29. After a careful assessment of the Reports and Affidavits filed herein, together with the witness testimonies, and noting that the children have, at all material times, been in the custody and care of the Applicants, with no known negative report of any mistreatment or neglect throughout those years, I form the opinion that it would be in the best interest of the children to allow them to be adopted by the Applicants as joint adopters.

Final Orders

30. In light of the foregoing, I allow the Originating Summons dated 4/09/2024 in the following terms;
 - i. An Adoption Order is hereby issued permitting and/or authorizing the Applicants, RNG and EK, (of the National Identity Card No. xxxxxxxx and No. xxxxxxxx, respectively), the children's step-mother and biological father, respectively, to jointly adopt and assume full actual and legal custody of the children known as EK and JM of the Certificates of Birth Serial No. xxxxxxxx and Axxxxxxx, respectively, in terms of prayers (3) and (4) thereof.
 - ii. The Guardians ad Litem, LWK and MW, are hereby discharged from that role.
 - iii. However, the same LWK and MW, (of the National Identity Card No. xxxxxxxx and No. xxxxxxxx, respectively) and previously the Guardians ad Litem, are now re-appointed, and hereby appointed to be the joint Legal Guardians of the same children known as EK as JM
 - iv. The Registrar General is directed to enter this Order in the Adopted Children's Register and to issue Certificates to that effect.



- v. Subject to any lawful and/or justifiable reasons noted or raised by the relevant authorities, agencies or persons, the Applicants be allowed to travel with the children outside the jurisdiction of the Republic of Kenya.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 25TH DAY OF APRIL 2025

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WANANDA J. R. ANURO

JUDGE

Delivered in the presence of:

Ms. Ruto for the Applicants

Court Assistant: Brian Kimathi

