



**In re AM (Minor) (Adoption Cause E004 of 2025)
[2025] KEHC 8294 (KLR) (29 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 8294 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
ADOPTION CAUSE E004 OF 2025
G MUTAI, J
MAY 29, 2025
IN THE MATTER OF THE CHILDREN ACT, 2022
IN THE MATTER OF AM (MINOR)
IN THE MATTER OF AN APPLICATION FOR ORDERS OF ADOPTION OF AM (MINOR)**

BETWEEN

HMW 1ST APPLICANT

NAK 2ND APPLICANT

AND

CHANGE TRUST ADOPTION SOCIETY RESPONDENT

JUDGMENT

1. AM (Minor) is the daughter of the 2nd Applicant, NAK. She was born on 27th October 2015 and is now 9 years 7 months old. She has 2 siblings UHM, who is 5 year old and HHW who is 3 years old. The latter two children are the biological issue of the marriage between the Joint Applicants.
2. The Joint Applicants are HMW and NAK. The two are Kenya citizens by birth born in Kilifi town in Kilifi County and Kariobangi in Nairobi County respectively. They got married on 7th December 2018 at Mtwapa, Kilifi County under Islamic law. As earlier stated they have 2 children together.
3. The Joint Applicants are stated be mentally and physically fit. They reside at Mtwapa next to [Particulars withheld] Academy with their children. If the adoption application is allowed they intend to bring up AM as a Muslim until she reaches the majority age when she may choose what faith to follow. They are Muslims, are aged 37 and 30 years respectively. They describe themselves as being financially stable and thus able to provide fully for the child. The Joint Applicant are aware that an adoption order once made is permanent.



4. The child was declared as being free for adoption by the Change Trust Adoption Society, a registered adoption society. The certificate freeing the child for adoption has serial number xxxxx.
5. Regarding the paternity of the child it was stated that the minor's biological father's whereabouts are presently unknown and that he could not be traced. He had not played any role in the minor's upbringing. The name of the father is given in the birth certificate as being BNM.
6. The Joint Applicants attached to the application the report to declare a child free for adoption dated 5th February 2025, certificate of birth, certificate of marriage, Police Clearance Certificate for both applicants a letter of the assistant chief of Shimo la Tewa Sub Location dated 28th January 2025, among other documents that this Court has perused.
7. The applicants filed together with the Originating Summons a Chamber Summons application dated 27th February 2025 vide which they sought to have Mr MHA of Mtwapa appointed as the guardian ad litem in respect of the said adoption cause.
8. Upon hearing the Chamber Summons application this Court appointed Mr MHA as the guardian ad litem and directed him to prepare and file the requisite report. Similar orders were issued to the Director of Children Services, Kilifi.
9. This matter was heard on 20th May 2025. On the said date, a total of 5 Witness testified I shall set out the summary of their testimonies below.
10. The first Witness was Ms Winifred Kambua Kaluku. She is the County Coordinator of Children Services, Kilifi. She testified that she conducted a home visit pursuant to the Court order. Ms Kambua testified that the child lives with the mother and 2 other children. The 1st Applicant works in Germany and supports the family. She testified that the child refers to the 1st applicant as the father. She recommended the adoption. According to her this is a kinship adoption.
11. The second witness was Ephraim Mureru Njama of the Change Trust Adoption Society. Mr Njama testified that the Change Trust assessed the applicants and the child and issued a certificate serial number xxxxx. He produced a report dated 5th February 2025 vide which he recommended the adoption.
12. Mr HMW testified as the third Witness. He lives in Germany, where he works as a lab technician. He stated, in his virtual testimony, that he wished to adopt AM, who is the daughter of his wife. He further testified that he had been her father since 2018 when he met and thereafter married her mother. It was his testimony that he had never met the biological father of the child. he is aware that adoption is permanent. The family is supportive. He therefore prayed that the adoption application be allowed.
13. The guardian ad litem was the fourth witness. Mr MHA testified that he is a businessman resident in Mtwapa. It was his testimony that he visited the home of the Joint Applicants on 22nd April 2025 and wrote the requisite report. He too recommended the adoption.
14. The last witness was the child's mother, Ms NAK. Ms Kiragu is a co-applicant in this adoption cause. She is a housewife. She testified that she would like her daughter to be adopted by the 1st applicant, as he has been taking care of her. It was her evidence that she was unaware of the child's father's whereabouts. Ms Kiragu testified that H and A have a good relationship and prayed that H be allowed to adopt A.
15. I have considered the application herein, materials in support, and evidence by various witnesses. The issues that emerge for determination are whether the child is available for adoption, whether the Joint Applicants are fit to adopt the child, and most importantly, whether the adoption is in the best interest of the said child.



16. From the evidence, it is clear that AM is the biological child of NAK, the second applicant herein. NAK is the wife of the first applicant. The present whereabouts of AM's father is unknown. He has not played a role in Ahlam's upbringing and has been totally absent. The child has been under the care of the Joint Applicants. From the evidence adduced, the proposed adoption enjoys the support of the extended family. It is also clear that this is a kinship adoption since the second applicant is the mother of the child.
17. Since the male parent is untraceable, and as this is a kinship adoption, the consent of the biological father is hereby dispensed with.
18. The proposed adoptive child is the issue of NAK. The biological mother is a Kenyan citizen and resides in Kenya. Article 14(1) of *the Constitution* of Kenya, 2010 provides that a person is a citizen by birth if on the day of the person's birth, whether or not the person is born in Kenya, either the mother or father of the person is a citizen. AM was born in Kenya, and her biological mother is Kenyan; thus, in view of this provision, the child herein is presumed to be a Kenyan citizen by birth.
19. The said child is above 6 weeks and below 18 years, the provision of which falls within the age bracket of any adoptive baby pursuant to Section 184(1) (b) of The Children's Act 2022. Further, Section 185(1) recognizes any child who is a resident of Kenya, whether born in Kenya or not, as eligible for adoption. I have no doubt that the child is fit for adoption.
20. Concerning the Joint Applicants' suitability, they are Kenyan citizens, thus qualifying this as local adoption. The 1st applicant is 37 years old, while the 2nd applicant is 30 years old, which places them in the age bracket of not less than 25 years or more than 65 years for an adoptive parent in compliance with Section 186(2) (a) of the Children's Act. The Joint Applicants have been described as financially stable, as indicated in the Director of Children Services Report. They are caring, loving Muslim couple with no criminal record. AM has fully bonded with the second applicant. The Joint Applicants understand the consequences of adoption and that it is permanent. They appreciate the role of parents. The second applicant aver that he will treat the child like her biological child. It's my view that the Joint Applicants have met the necessary requirements to adopt the said child.
21. On the question of whether the adoption is in the best interests of the child, guidance is drawn from Article 53(2) of *The Constitution* and sections 8(1) and (2) of The Children's Act 2022, which underscores the best interests of children as the primary consideration before making any decision concerning children.
22. I Am also guided by the decision of Nyakundi, J in the case of *In re B (Baby)* [2018] KEHC 6114 (KLR), where he stated that:-

“The purpose of Kenya's Constitution and Children's Act is to protect and promote the welfare of Children by providing them with stable family units. The fundamental concern, therefore, in every adoption cause provision is in the best interest of that very child.

That law presumes that by granting foster care the adoptive parties will provide and promote a stable, supportive and nurturing environment for the child. From the reports filed by the Director Children Services and Kenya Children's Homes adoption agency both applicants are in good health, have fulfilled the condition's precedent set out under section 158 of the Children's Act.

It is also not in dispute that they both have a steady income and a home where they live together. During the pendency of these proceedings both applicants have had the opportunity to bond with the child since her placement in their custody.



It is that family unit that *the constitution* contemplates under Article 45 which also has to take responsibilities in fulfilling the obligations enjoined in Article 53 of the same constitution.”

23. Ahlam’s biological father’s present whereabouts are unknown. The Joint Applicants will help Ahlam’s progress in education and life and give her better life chances. Like any other child, Ahlam needs parental care and guidance. She also needs basic necessities like food, shelter, education, and clothing. She has fully integrated with the Joint Applicants. It is obviously in the best interests of the said child that this adoption application is allowed.
24. In my view, the adoption application has merit. I therefore issue the following orders:-
 1. I declare the child AM (Minor) a Kenyan citizen by birth;
 2. I dispense with the consent of the biological father to this adoption since his present whereabouts are unknown, and also as he has not played any role in AM’s upbringing since her birth;
 3. The Joint Applicants herein, HMW and NAK, are hereby authorized to adopt AM (Minor);
 4. AM shall henceforth be known as ;
5. I appoint FA to be the legal guardian of AMH and entrust her with the responsibility of taking care of AMH in the event the Joint Applicants die or are otherwise permanently unable to take care of her before she attains the age of majority;
6. The Register General is hereby ordered to make an entry recording the adoption order herein and the date of birth of AMH as being 27th October 2015 in the Adopted Children Register as provided for by section 201 of the *Children Act*, 2022; and
7. The guardian ad litem, MHA is hereby discharged.
25. I make no orders regarding costs as this is a non-contentious adoption matter.
26. It is so ordered.

DATED AND SIGNED AT MOMBASA THIS 29TH DAY OF MAY 2025. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE

In the presence of:-

Ms Mwashushe, for the Joint Applicants; and

Arthur – Court Assistant.

