



**In re Adoption of Baby MH (Child) (Adoption Cause E011 of 2024)
[2025] KEHC 7132 (KLR) (28 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 7132 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
ADOPTION CAUSE E011 OF 2024**

DKN MAGARE, J

MAY 28, 2025

IN THE MATTER OF THE CHILDREN'S ACT NO. 29 OF 2022

AND

IN THE MATTER OF BABY MH (CHILD)

AND

IN THE MATTER OF AN APPLICATION FOR ADOPTION ORDER BY PMN AND AWM

IN THE MATTER OF

PMN 1ST APPLICANT

AWM 2ND APPLICANT

JUDGMENT

1. This Judgment is in respect of the Originating Summons dated 17.12.2024 seeking an adoption order.
2. The application seeks for orders that:
 - a. The Applicants be authorized to adopt baby MH a child who is to be known as LNW and the Registrar General be directed to enter this adoption into the Register of Adoptions.
 - b. EWM and Joshua Maina Ndiritu be appointed as legal guardians of the child.
3. The application is premised on the grounds on its face and in the Statement and Supporting Affidavit of PMN sworn on 17.12.2024. The Applicants are husband and wife married in Nairutia Catholic Church on 29.2.2020 and have two biological children.
4. That the child was abandoned and adopted from Hope House Babies Home through the Adoption Agency, Bucker Adoption Services and has no known biological parents.



Analysis

5. The issue is whether the court should allow the adoption herein. This court has the power to make an adoption order. Section 183 of Children's Act sets out requirements for adoption in Kenya. It states as follows:
- (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", authorizing 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;
 - (b) "local adoption" means an adoption in relation to which the child is resident in Kenya; and
 - (ii) the adopting parent or parents are Kenyan nationals resident in Kenya; and
 - (c) "foreign adoption" means an adoption in relation to which —
 - (i) the adopting parent or parents are Kenyan nationals with dual citizenship;
 - (ii) the adopting parent or parents are foreign nationals whether or not resident in Kenya;
 - (iii) the adopting parent or parents are not Kenyan nationals but are biologically related to the child; or
 - (iv) the adopting parent or parents were once Kenyan nationals but have lost their nationality by operation of the law of the host country to which the prospective parent or parents have a nationality
6. Pre-requisites for adoption are also stated under Section 184 of the *Children Act*, 2022 as follow:
- (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.
 - (2) A person, including a parent, guardian or adoption society, shall not, prior to the making of an adoption order, entrust a child to the care, possession or control of any person not qualified to adopt a child in accordance with this Act.
 - (3) An applicant shall not preselect a prospective adoptive child except—
 - (a) In the case of kinship adoption;
 - (b) Where the applicant is a foster parent seeking to adopt a fostered child under the applicant's care.
 - (4) The Secretary shall monitor and submit reports to the courts on the wellbeing of a child who is subject to adoption proceedings.



- (5) Any person who contravenes subsections (1) or (2) of this section commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding three years or to a fine not exceeding one million shillings, or to both.
7. Under Section 185, Children who may be adopted are stated as follows:
- (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 filling 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.
8. Qualifications and disqualification for applicants for adoption is provided for under Section 185 of the Children's Act 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.
- (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.
- (4) The Court shall not make an adoption order in favour of a sole male applicant, unless the applicant is a blood relative of the child.



- (5) The Court shall not make an adoption order in favour of the following persons unless the Court is satisfied on reasons to be stated on the record that there are special circumstances that warrant the making of the adoption order an applicant or joint applicants who has, or both have, attained the age of sixty-five years.
 - (6) The Court shall not make an adoption order in favour of an applicant or joint applicants if the applicant or joint applicants, or any of them—
 - (a) is of unsound mind within the meaning of the *Mental Health Act* (Cap. 248);
 - (b) is incapable of exercising proper care and guardianship of a child;
 - (c) has been convicted by a Court of competent jurisdiction for any of the offences specified in the Third Schedule or similar offences;
 - (d) in the case of joint applicants, if the applicants are not married to each other;
 - (e) is a sole male applicant except where the applicant is a biological relative of the child; or
 - (f) is a foreign applicant except where the applicant is a biological relative of the child.
 - (7) Notwithstanding anything contained in this section the Court may at its sole discretion decline to make an adoption order in favour of any person or persons if the Court is of the view that it is not in the best interests of the child to make the order.
 - (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.
 - (9) If the child referred to in subsection (8)(c) has a disability which restricts or impairs the child's ability to independently give his or her consent, the child shall be accorded such assistance, including the assistance of an intermediary, to facilitate his or her written consent.
9. In light of the above law, the court heard the relevant parties who testified in court and also perused all the documents filed in court.
 10. The Report by the Children Officer dated 27.3.2025 was also filed in court on 16.4.2025 certifying the applicants as meeting the legal parameters to adopt the minor herein.
 11. The applicants in my view, as supported by evidence on record, have met all the legal requirements of adoption. No doubt, the Applicants are clear with intentions to protect, support, provide inheritance for and maintain the child as their own. The child was found abandoned on 9.5.2024 and has no known biological parents.
 12. The commendation report by the Children's Officer and the Child Adoption Agency, Bucker Adoption Services, whose officer, one James Jumba testified in Court too gives the Applicants the go ahead to adopt the minor. They describe the Applicants as committed and able to care for and maintain the child, and they hold the view that the adoption herein sought will be in the child's best interest.
 13. Thereof, the application for adoption is merited and I allow it.



Determination

14. In the upshot, I make the following orders:

- i. The Applicants PMN and AWM are hereby authorized to adopt the child currently identified as MH.
- ii. Consent of the biological parents is hereby dispensed with as the child is abandoned.
- iii. The child shall be known as LNM.
- iv. The Registrar General is hereby directed to make the appropriate entry of LNM in the Adopted Children's Register.
- v. EWM and JMN be appointed as legal guardians of the child.
- vi. The guardian ad litem is hereby discharged.
- vii. The file is closed

**DELIVERED, DATED AND SIGNED AT NYERI ON THIS 28TH DAY OF MAY, 2025.
JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

KIZITO MAGARE

JUDGE

In the presence of: -

Ms. Kemunto for the Applicants

Court Assistant – Michael

