



REPUBLIC OF KENYA



**In re Baby BBO (Adoption Cause E004 of 2025)
[2025] KEHC 11182 (KLR) (30 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11182 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
ADOPTION CAUSE E004 OF 2025
RN NYAKUNDI, J
JULY 30, 2025
IN THE MATTER OF ADOPTION OF BABY BBO
BY
CWO AND ENS**

RULING

1. The Applicants approached this court vide an Originating Summons dated 26th March 2025 seeking the following orders;
 1. That the applicants be authorized to adopt the child Baby BBO.
 2. That upon the making of the adoption orders the said child be known as BLW.
 3. That the Registrar General do make the appropriate entry of BLW in the Adopted Children's Register.
 4. That the child BLW be presumed to be a Kenyan citizen born in Kenya and that the Director of Immigration Services do issue BLW with a Kenyan Passport.
2. The application is expressed to be brought under Sections 8 & 183 of the *Children Act* 2022, Section 9 of the *Kenya Citizenship and Immigration Act* No. 12 of 2011 & Article 14, Constitution of Kenya 2010.
3. The applicants swore an affidavit in support of the application and filed a statement in support of the same as well. They stated their full names and identity card numbers and further, urged that they were married under African Christian Marriage in 2007. The applicants are aged 54 and 63 years respectively and are farmers who reside in [Particulars Withheld], Uasin Gishu County. They further deponed that the subject minor came into their possession on 10th March 2024 and has been in their care since then. They annexed a bundle of documents relating to the minor and urged that the child is of Kenyan and African race. They prayed the court allow the adoption order and proposed that he be known as BLW.



4. The court directed that the Directorate for Children Services provide a report by the Children's officer to establish the suitability of the adoptive parents. The children's officer filed a report dated 14th July 2025 in court. In his report, he established that the minor was an abandoned child who was found at a maize plantation in Range Sub County on 23rd June 2022 and the abandonment case was reported to Rangwe Police Station. The case was later reported to the children's office and the child was placed in the Child Welfare Center – Kisii Branch by the directorate of children's services through a court process to wit; Homa Bay Magistrates Case No, E012 of 2022. The officer also reported that the child was declared free for adoption by the Committee of Child Welfare Society of Kenya on 27th March 2024 and was issued a declaration certificate number 11XXXX.
5. The report made the observation that the child was declared free for adoption by a duly registered adoption society and further, that the registration certificate issued by the National Council for Children's services was valid. The officer conducted a home visit and found that the child has bonded well with the prospective parents who he recognizes as 'dad and mum'. The report recommended that the applicants meet the requirements for adoption and that it is in the best interests of the child that the adoption be allowed.

Analysis & Determination

6. The only issue for determination is; Whether the adoption order for the subject minor should issue.
7. Adoptions are governed by the Children's Act 2022. Section 183 of the Children's Act 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.
8. The pre requisites for adoption are set out at section 184 of the Children's Act as follows;
 - (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.
9. Section 185 of the act states as follows on children who may be adopted;

185 Any child who is resident within Kenya may be adopted whether or not the

 - (1) 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.
10. As per the details of the children's report, it is evident that the minor was abandoned which was buttressed by a duly registered certificate that declared him free for adoption.
11. The pre-requisites for adoption as per the provisions of section 184 of the Children's Act which provides:-
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.
12. Upon considering the contents of the report by the directorate of children's services, I am satisfied that the Applicants have met the pre-requisites under section 184 of the act.
13. The provisions on children who may be adopted are provided under section 185 which states as follows;
- 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.

14. Section 186 gives the relevant provision as to who may apply to adopt a child. It provides;

- (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.

15. The age of the applicants being 54 and 63 years old, and further, being spouses who have applied jointly, it is my considered view that they qualify as persons who may adopt a child. I am additionally guided by the case of *In re B (Baby)* [2018] eKLR, where the court stated: -

“I am of the considered view that weighing all factors and the evidence placed before me, the applicants are of sufficient ability to bring up the child and to furnish her with appropriate support and maintenance within their resource base available to them.”

16. Suffice it to say, when considering an adoption order, of paramount importance is the best interest of the child. In *Weller & others v Associated Newspapers Ltd* [2015] All ER (D) 194 it was held :

“These best interest may be held in a variety of different contexts for example the balancing exercise must always be undertaken in children's cases as in adult cases although a child's right is not a trump card in the balancing exercise, the primacy of the best interests of a



child means that, where a child interest would be adversely affected, they must be given considerable weight.”

17. Further, the court in the case of *In re MA (Baby)* [2021] eKLR stated: -

“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 is the best interest of that very child.”

18. I am also guided by the case of *In re IK (Child)* [2020] eKLR, where the court stated:-

“She needs parental care to grow up as a normal child with emotional and physical protection, which the applicants have stepped in to offer. In that regard, the applicants meet the legal requirements for adoption. Further, all reports recommended adoption for the benefit and well-being of the child. As *the Constitution* and the law state, in all matters concerning a child, the child’s best interests are paramount.”

19. From the home visit conducted and the interviews that the directorate of children’s services carried out when preparing the report, I am convinced without a shadow of doubt that it is in the best interest of the child that the adoption order be allowed. The child being three years old has bonded with the prospective adoptive parents and from their financial status, they will be able to provide him with a stable home and parental care, and further, cater for his educational, financial and emotional needs.

20. The applicants having sought to have the child be presumed a citizen of Kenya, the provisions of Article 14 of *the Constitution* become relevant to wit;

(4) A child found in Kenya who is, or appears to be less than eight years of age and whose nationality and parents are not known, is presumed to be a citizen by Birth.”

21. On the entries to be made by the registrar, Section 201 of the Children’s Act provides;

(1) Every adoption order made by the Court shall contain a direction to the Registrar to make an entry in the Adopted Children Register in the prescribed form.

(2)

(3)

(4) ...

(5) Where an adoption order is made by the Court, the Court shall direct that the order be lodged with the Registrar, and on receipt of the order, the Registrar shall comply with the directions contained in the order with regard to—

(a) marking an entry in the Register of Births with the word "Adopted"; and

(b) making the appropriate entry in the Adopted Children Register.

22. The upshot of the foregoing is that I find and hold that the adoption application has merits. Consequently, I issue the following orders;

i. The Applicants are hereby authorised to adopt baby BBO.

ii. The minor (Baby BBO) shall henceforth be known as BLW in the adopted children’s register.



- iii. The Registrar general do make the appropriate entry of BLW in the Adopted Children's Register
- iv. The baby BBO, hereinafter referred to as BLW is hereby declared a Kenyan Citizen by birth.
- v. PNS is hereby appointed as the Legal Guardian of BLW and entrusted with the responsibility of taking care of him in the event that the Applicant becomes deceased or is otherwise permanently unable to take care of FF HK before he attains the age of majority;
- vi. The guardian ad litem ASA is hereby discharged.

GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT VIA CTS AT ELDORET ON THIS 30TH DAY OF JULY 2025

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R. NYAKUNDI

JUDGE

Tel: 0722XXXX/0720XXXX (Shared via watsup)

