



REPUBLIC OF KENYA



KENYA LAW
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**In re MK (A Child) (Adoption Cause E001 of 2025)
[2025] KEHC 6889 (KLR) (21 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6889 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
ADOPTION CAUSE E001 OF 2025
RM MWONGO, J
MAY 21, 2025**

IN THE MATTER OF

**EMM 1ST APPLICANT
MWM 2ND APPLICANT**

JUDGMENT

The Application

1. The applicants filed an undated originating summons, filed on 18th January 2025, seeking the following orders from this court:
 1. That the applicants be authorized to adopt MK, a minor;
 2. That the consent of the biological parents be dispensed with as the child was abandoned;
 3. That upon making of the adoption order, the said child be known as BRG;
 4. That the Registrar General do make the appropriate entry of BRG in the Adopted Children's Register;
 5. That the child BRG be presumed to be a Kenyan citizen and that the Director of Immigration Services do issue BRG with a Kenyan Passport; and
 6. That LMN be appointed as the Legal Guardian of the child BRG
2. The originating summons was accompanied by a statement by the applicants in support of the application.

The Applicants' Background

3. At the time of filing the application, the 1st applicant is a businessman and was 67 years and 10 months old while the 2nd applicant, a retired teacher, was 61 years old. They are married under Ki-Embu



customary Law and they produced an affidavit of marriage to prove this. They are parents to one BM who is now an adult and who swore an affidavit supporting the applicants' application to adopt the child. In their statement, they stated that the child has been in their care since the year 2016 and they would now like to adopt her.

4. Due to medical reasons, the couple has not had more biological children thus they chose to adopt the child herein. They make a decent income to enable them provide for their needs and those of the child. They understand the obligations that come with being adoptive parents. They relate well with the community around them and they process Christian faith.
5. The couple has the support of their families in their intentions to adopt the child. they took the child in under their care when she was 1 year old in 2016. Now, the child is about 12 years old and in grade 8 in primary school.

Background of the child

6. In 2014, the child was found abandoned at a church gate in Imenti North, Meru County. The matter was reported at a police station and the child was admitted at a hospital temporarily before being rescued into a children's home in Meru County. The police investigated the abandonment but no biological family was ever traced and no one claimed the child. The Children Welfare Society of Kenya (CWSK) placed the child under the foster care of the applicants in December 2016. The child has remained under the applicant's care to date.

Guardian *ad litem*

7. The court, vide order issued on 3rd March 2025, allowed a chamber summons, filed simultaneously with the originating summons, on 18th January 2025 through which the applicants sought that AWM be appointed as Guardian *ad litem* in accordance with section 188(1) of the *Children Act*. The court also ordered that, reports be filed by the Secretary of Children's Services, and the appointed Guardian *ad litem*.

Report by the Guardian *ad litem*

8. In accordance with section 188 (2) (b) of the *Children Act*, the Guardian *ad litem* filed a report dated 10th January 2025 in court. She vouched for and highly recommended the applicants as adoptive parents. Through her visits to the applicants' Embu home, she reported that the applicants and the child have bonded well and that they are great foster parents to the child.

Report by the Secretary, Children Services

9. 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 28th March 2025 was filed. The report detailed the history and background of the applicants in relation to this case.
10. Upon a home visit, the children officer detailed that the applicants live in their own 4 bedroomed house that is sufficiently serviced and furnished and sits on a 2-acre piece of land. The applicants practice farming activities on the land where they also live. The report recommended the applicants as good adoptive parents to the child.



Suitability of the applicants for adoption

11. The report notes that EMM was aged 66 years and MWM is 60 years old. Notwithstanding the advanced age of EMM. The report recommends as follows:

“The applicants fulfill the legal provisions for local adoption under the *Children Act* No 8 of 2021....”

and that

“The child stands to gain from the opportunities presented by [the applicants]... The proposed adoption will be in her best interest”

12. 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.” [Emphasis added]

13. The 1st applicant is above the statutory recommended age of 65 years while the 2nd applicant is 61 years old. The above cited provision demands that in a joint adoption, both applicants should be below the age of 65 years but above the age of 25 years unless they are related to the child. In the circumstances, it is not possible for the court to make an adoption order since one of the applicants does not meet this requirement.

Best interest of the child

14. A child’s best interests are of paramount importance in every matter concerning the child. This is the dictate of Article 53(2) of the *Constitution*. 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.”

15. The child is about 12 years old now; she is below the age of 18 years. This is the statutory requisite age bracket of 6 weeks and 18 years for a child to qualify for adoption under Sections 2 and 184 (1) of the *Children Act*.

Report of the Child Adoption Society

16. 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 Child Welfare Society of Kenya, CWSK provided a detailed report of its findings on the child dated 12/03/2025 together with the Certificate Declaring



the Child free for adoption, dated 03/12/2016. In their report, they stated that the minor has remained unclaimed since her abandonment and that it is in her best interest to declare her free for adoption under section 185(4)(c) of the Children Act. There is a time lapse of nine (9) years between the date of the declaration certificate and the CWSK report.

17. The report notes that the child was placed with the applicants as far back as 03/12/2016 for foster care; that the applicants have bonded with the child and were recommended as “fit to adopt the child”. The report concludes as follows:

“We therefore recommend her adoption since it will serve in the Child’s best interest”

18. The CWSK officers and or the Children Services Officers ought to have advised the applicants to commence the adoption earlier or indicated and provided special circumstances for consideration by the Court given the age of EMM.

Conclusion and Disposition

19. The documentation presented in court regarding the adoption of MK qualifies her adoption. However, the 1st applicant is 67 years old, above the age allowed under section 186(2) of the Children Act. The provision expressly forbids the court to make an order of adoption where the applicant is above the age of 65 years old.
20. There are no “special circumstances” shown in the application that would warrant the Court exercising its discretion under Section 186(5) to make an adoption order in favour of an applicant or applicants who has or both have, attained the age of sixty-five years.
21. In this case, it is in the best interest of the child that no order of adoption is made to the joint applicants.
22. However, given that the child has been fostered and has bonded with the applicants for nine (9) years since 03/02/2016 according to the CWSK report, this Court is prepared to allow the 2 applicants with the support of CWSK to file an Affidavit setting out special circumstances under which the Court can exercise its discretion in terms of Section 186 (5) of the Children’s Act.
23. This is in the best interest of the child, and, accordingly, this file shall remain open for a period of three (3) months to facilitate such application during that window.
24. Orders accordingly.

DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 21ST DAY OF MAY, 2025.

R. MWONGO

JUDGE

Delivered in the presence of:

EMM - Applicant

MWM - Applicant

LN – Legal Guardian

Francis Munyao - Court Assistant

