



**In re VD (Baby) (Adoption Cause E004 of 2024) [2025] KEHC 8013 (KLR) (4 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8013 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
ADOPTION CAUSE E004 OF 2024**

**EM MURIITHI, J**

**JUNE 4, 2025**

**IN THE MATTER OF**

**EMK ..... 1<sup>ST</sup> APPLICANT**

**AKM ..... 2<sup>ND</sup> APPLICANT**

**RULING**

1. This is an application by Originating Summons dated 28<sup>th</sup> October 2024 and Amended on 7<sup>th</sup> April 2025 for the adoption of Baby VD a male child aged 6 years 5 months (DOB 18<sup>th</sup> December 2018).
2. The applicants EMK (67) and AKM (47) are spouses married for 16 years since 10/5/2009 are shown to be able to provide for the child and they understand the permanent nature of an adoption as well as its consequences that the child becomes their child with all the rights accruing to a child including inheritances of their property as their biological child. The applicants have lived with the child for one year from 9/4/2024.
3. The subject, a male child born on 18/12/2018, rescued after being abandoned along Uhuru Highway Nairobi and placed at Imani Children’s Home, Nairobi and later placed with the applicants on 9/4/2024 and was declared free for adoption on 3/6/2022 by the Buckner Kenya Adoption Society, Nairobi. He is proposed to be named VMM.
4. By Report dated 20/2/2025 the Department of Children Services Kirinyaga County objects on the grounds that the 1<sup>st</sup> Applicant does not qualify for the adoption being over the 65 years prescribed under section 186(2) of the *Children Act* as follows:

“General Observation, Assessment and Recommendation

The child is healthy, happy, and well bonded with the parents. The prospective adoptive parents are physically, socially and emotionally fit to adopt the child. The couple live in harmony and are fully committed to raise the child as their own.



The couple is hard working, financially is able to meet the needs of the child and morally stable. They do not smoke, take alcohol or have a history of abusing drugs or any other psychotropic substances. They are devoted Christians of good morals standing in society even though they go to different churches. The 1st applicant go to Jehovah Witnesses Church while the 2nd applicant go to Gospel Revival Centre Church at Kiangai. When asked them whether their attendance to different churches will dissolution the child, they said the child chooses whether to go church with the father or to go with the mother. In my view the child has not yet developed that capacity to choose but requires the guidance of the parents according to his evolving capacities.

However, this application in my view does not meets one key requirement for applying to adopt a child set out in the [children act](#) 2022, Section 186(2a) which provides that:

The court shall not make an adoption order in any case unless the applicant has attained the age of twenty-five years, but is not above the age of sixty-five years"

In this application, the 1st applicant is above sixty-seven (67) years old and interestingly he was already above 65years old when the child was being placed with the applicants on 9th April 2024.

In view of the above observation, the Directorate of Children Services objects to the application because it violates the provisions of the [children Act](#) No. 29 of 2022 under which it is filed.

Kamwala Ngeke

County Coordinator

Kirinyaga County

Children Services”

5. The Report of the Guardian ad Litem JMK dated 28/2/2025 reports that the child has well bonded with the applicants and recommends the adoption, as it will provide the child with a chance to grow in a warm comfortable and conducive family set up.
6. The proposed Legal Guardians CWK aged 49 years with adult children of her own and cousin of the 1<sup>st</sup> applicant understands and accepts the role and duties of a legal guardian to provide for and take care of the child in the event of disability or death of the applicants.
7. The statutory consents of the child parents are would be waived in view of the circumstances of the case.
8. The Court has observed and examined the subject child and recorded as follows:

Court:

The Child is examined by the Court. He knows his name VMM. He can write out his name, his class PP2. He can write the alphabet A-Z and pronounce it all. He is confident, pleasant. He can draw. He is smiling all through his engagement with the court. He is well-groomed dressed in warm clothes. He refers to the 1st applicant as daddy and 2<sup>nd</sup> applicant as Mum. He has obviously bonded well with the applicants.”

9. The Court considers that it is in the best interests that the child gets a home with loving parents who have in his placement demonstrated willingness and ability to love, care and protect him. However, the



applicants, respectively aged 67 and 47, in this case where the child is 6 years 5 months (6 years at the time of filing of the application), face the statutory bottleneck set out below.

10. Section 186 of the *Children Act* 2022 is clear on the qualifications of adoptive parent/applicants as follows:

“186. Who may apply to adopt a child.

- (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.”

11. The Court would be justified to make an adoption order if there are exceptional circumstances as provided under section 186 (5) of the Act as follows:

“(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 [where] an applicant or joint applicants who has, or both have, attained the age of sixty-five years.”

## Orders

12. Accordingly, for the reasons set out above, the Court makes the following orders:

1. The consideration of the application for adoption in this matter shall be deferred to await the demonstration of any exceptional circumstances to warrant the making of the adoption order notwithstanding the 1<sup>st</sup> applicant having attained the age of 65 years.
2. The Children Officer Kirinyaga County is requested to file a further report on the child as to any exceptional circumstances and or alternative methods of providing for protection, care and control of the child subject of this application consistent with his best interests in terms of Article 53 of the *Constitution*.
3. The matter shall for that purpose be listed for further hearing on Friday 27/6/2025.

Orders accordingly.

**DATED AND DELIVERED THIS 4<sup>TH</sup> DAY OF JUNE 2025.**

**EDWARD M. MURIITHI**



## **JUDGE**

Appearances:

Ms. Muhanda for the Applicants.

