



**In re VD (Baby) (Adoption Cause E004 of 2024)
[2025] KEHC 13516 (KLR) (30 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 13516 (KLR)

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

EM MURIITHI, J

SEPTEMBER 30, 2025

IN THE MATTER OF ADOPTION OF BABY VD

IN THE MATTER OF

EMK 1ST APPLICANT

AKM 2ND APPLICANT

JUDGMENT

1. By a ruling delivered on 4 6 2025, (which is annexed hereto) the Court found that the applicants qualified to appointed as the adoptive parents of the subject herein and that it would be the best interests of the minor for such adoption to be approved, save for the provisions of sections 186(5) which required that both applicants be below the age of 65 years and the 1st applicant had exceeded that limit.
2. The Court consequently called for exceptional circumstances which could justify the adoption order notwithstanding the applicant’s age and directed that the Children Officer and the applicant do demonstrate such exceptional circumstances before further orders of the Court, as follows:
 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 6years 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.”

3. In a Report dated 18 7 2025, the County Coordinator Children Services, Kirinyaga County consciously addressed the age limitation and the requirement of exceptional circumstance which he submitted existed in the present case as follows:

“The [Children Act](#) Cap 141 laws of Kenya The [Children Act](#) Cap 141 makes provisions on how adoption is to be undertaken in Kenya. The act echo the provisions of the [Constitution](#) and it provides in Section 4(3) as read with Section 8 all vouch for the best interest of a child as the primary consideration. Further, Section 186(5) despite the protection of children under provisions of Section 186(2) bring in the possibility of circumstantial factors which can be considered in the best interest of the child.

Exceptional Circumstances

Given the guidance above and re-assessing the case afresh with the mirror of the above provisions, the following can be considered as exceptional circumstances.

1. Family and community is best environment for a child to grow and develop holistically - The child in this matter was abandoned by the roadside along Uhuru high way in Nairobi. He was rescued and placed in an institution (Imani children's home) where he stayed for over 5years before he could find parents who could care, protect, love and provide him a home and a family away from the institution. So the child after over 5 long years finally



found parents and a family in a conducive community environment. The government of Kenya is implementing The National Care reform strategy for children in Kenya 2022 - 2032 whose expected results is that by 2032, all children and young people in institutional care will transition to live safely, happily and sustainably in family and community-based care (adoption is one of the care options) and therefore allowing this process to proceed, the court will not only be furthering the best interest of the child but also the government's policy.

2. Joint applicants are legally married and the 2nd applicant meets the age limit criteria - The applicants are Kenyans, born and brought up in Kirinyaga County. They are well known in the community. They jointly applied to adopt the child so that they can give a child a home and a family and intent to play the role of bringing up the child together. In addition, the applicants are legally married having solemnized their union on 10th May 2009 and have remained in a peaceful and stable marriage for over 18years now. This duration by extension is testimony that the child has security in the hands of the applicants.

Furthermore, the 2nd applicant is 47 years old while the child is 6 years 7 months old, this means that the child will be 18years when the 2nd applicant will be 55years old, which is still below the 65 years age limit. Therefore, the fact that this matter is a joint application and one applicant is below the 65years mark and the child will be above 18years old before the prospective mother attains 65 years can in my view be considered as a special circumstance.

3. Duration of bonding - The child has been in continuous care, protection and control of the applicants from 9th April 2024 up-to-date which is over one year now. The child has consequently bonded well with the applicants and the extended family. He knows the applicants by name and calls them 'mum' and 'dad'. The child has developed emotional attachment to his parents and his parents to the child. During the period the applicants have stayed with the child, they have jointly provided physical, emotional, personal development, education, nutrition and medical care and have demonstrated unquestionable capacity to parent the child. Separating the child from the prospective parents whom he has grown to believe and trust are his parents might have lasting negative implication on trusting and bonding with any other couple and will tear down the delicate heart of the child.
4. Continuity of Right to Education-The child is in school, where he has formed relationships with other children, the school and teachers. Everybody in school know the child to be son to the applicants. If the adoption will not progress to conclusion and the child is withdrawn from the school, it will affect his progression in learning and will loose on time and catching up in another school and environment will be difficult. Indeed, severing his already formed relationships with other children definitely will not be in the best interest of the child.

Conclusion

Having assessed the case afresh and having outlined what in my view constitute exceptional circumstances, I find the circumstances weighty visa viz the provision of The [Children Act](#) 2022 Section 186(2a) and recommend the adoption to proceed.



Kamwila Ngeke
County Coordinator Children Services
Kirinyaga County”

4. On the part of the applicant, the Counsel Ms. Muhanda, made the plea that the child had bonded well with the applicant and though the 1st applicant has exceeded the age of 65 years, he was married to the female applicant who was below the age limit, and urged the court to make the adoption order in the best interests of the child, as follows:

“Ms. Muhanda

We pray that as the 2nd Applicant is within the age, [and] there is a competent legal guardian for the minor, the child should not be rejected the second time. The court should allow eh adoption as eh child has bonded in the family.

The applicants have interacted well and it is in the best interest of the child tha the adoption is granted.

The 1st applicant has achild of his own but he 2nd applicant has unfortunately not been able to bear a child. Hence the adoption.

We rely on the best interest of the child and on the report of the Children Officer.”

5. Upon considering the exceptional circumstances presented in this case as detailed above, and having prior determined that the adoption would be in the best interest of the child, the Court is persuaded that the defect in terms of section 186(5) of the *Children Act* in the excessive age of the 1st applicant, 67, is suitably cured by the fact that the 2nd applicant who as the female seeks to mother the child is at 47 well below the age limit of 65 years and has, in her circumstances demonstrated the necessary love, passion, interest, energy and necessary life expectancy to afford care for the minor child in his best interest.

Orders

6. Accordingly, for the reasons set out above, the Court approves the application for adoption and shall makes the orders sought by the applicants in the Amended Originating Summons dated 28 10 2024 and amended on 7 4 2025, and more particularly in consequence order that:
 1. Pursuant to section 187 (1) (a) and (2) (a) of the *Children Act*, the consent of the biological parents of Baby VD is dispensed with since the child was abandoned shortly after birth.
 2. The Applicants EMK and AKM are authorized to adopt Baby VD, a minor.
 3. The child shall be known as VMM and the Registrar General be directed to enter this adoption into the Register of Adoptions.
 4. The court appoints CWK as the Legal Guardian of VMM, the child subject of these proceedings for purposes of section 195(1) of the *Children Act*.
 5. The Court directs the Registrar General to make the appropriate entries in the Adopted Children Register in respect of BABY VD now known as VMM pursuant to section 201 (1) of the *Children Act*.



6. The Court orders that the child BABY VD now known as VMM shall be considered a Kenyan Citizen in terms of Article 14 (4) of the Constitution of Kenya.
7. The Guardian Ad Litem is discharged in terms of section 188 (4) of the Children Act.
7. The Ruling of the Court dated 4 6 2025 is attached hereto.
Order accordingly.

DATED AND DELIVERED THIS 30TH DAY OF SEPTEMBER 2025.

EDWARD M. MURIITHI

JUDGE

Appearances:

Ms. Muhanda for the Applicants.

