



**In re Adoption of Baby NM (A Child) (Adoption Cause E006 of 2024) [2025] KEHC 7134 (KLR) (29 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 7134 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT EMBU  
ADOPTION CAUSE E006 OF 2024  
RM MWONGO, J  
MAY 29, 2025**

**IN THE MATTER OF THE CHILDREN ACT CAP. 141 OF THE LAWS OF KENYA  
IN THE MATTER OF THE ADOPTION OF BABY NB (A CHILD)**

**IN THE MATTER OF**

**HMG ..... 1<sup>ST</sup> APPLICANT  
MMK ..... 2<sup>ND</sup> APPLICANT**

**JUDGMENT**

**The application**

1. The applicants filed originating summons dated 14<sup>th</sup> August 2024 and amended on 17<sup>th</sup> January 2025 seeking the following orders from this court:
  1. That the consent of the biological parents of the child NB be dispensed with since he was rescued as an abandoned child;
  2. That the applicants be authorized to adopt the child named NB;
  3. That upon granting order 2 above, the court be pleased to issue an order renaming the child PMM;
  4. That the Registrar make the appropriate entries in the Adopted Children’s register in respect of baby PMM; and
  5. That the court issues any other orders as may be necessary in the best interest of the child.
2. The originating summons was accompanied by a statement by the applicants in support of the application.



3. Simultaneously, the applicants filed a chamber summons seeking appointment of a Guardian Ad Litem and that the Children Service be directed to conduct investigations as to the suitability of the applicants to adopt Baby N.B
4. The chamber summons was granted and a Guardian Ad Litem was appointed and the Children's Service directed to file a report.

### **The applicants' background**

5. The applicants are husband and wife, living and working in Embu County. The 1<sup>st</sup> applicant is a retired teacher while the 2<sup>nd</sup> applicant is still in the service. They also have successful businesses within the county. In their statement, they affirmed that they make a decent income to enable them take care of the child comfortably. They profess Christian faith and they are law abiding citizens.
6. The child was placed in their care after being abandoned in the hands of a stranger shortly after he was born. He was initially taken to Embu Children's Home who placed the child in the applicants' care and custody for a period of 2 years.

### **Background of the child**

7. The child was about 2 weeks old when his mother asked a stranger to hold him as she goes to answer a call of nature. The mother never returned. The stranger reported the matter at Runyenjes Police Station in July 2018 and the child was admitted at Embu Children's Home. The child has remained unclaimed since. He was placed under the care of the applicants who have now applied to adopt him.

### **Guardian Ad Litem**

8. The court appointed MKK as Guardian ad litem in accordance with section 188(1) of the [Children Act](#). the Guardian ad litem was required by the court to file a report.

### **Report by the Guardian ad litem**

9. In accordance with section 188(2)(b) of the [Children Act](#), the Guardian ad litem filed a report dated 10<sup>th</sup> January 2025 in court. She vouched for and highly recommended the applicants as adoptive parents. She reported on the background of the couple and highlighted their desire to be good parents to the child. She observed that the applicants and the child have bonded well and the applicant's family supports them in this endeavour.

### **Report by the Secretary, Children Services**

10. 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 07<sup>th</sup> January 2025 was filed. The report detailed the history and background of the applicants in relation to this case. The 1<sup>st</sup> applicant is 67 years old while the 2<sup>nd</sup> is 52 years old.
11. The report revealed that the applicants live in a 2 bedroomed house that is well serviced. That the house is in a secure neighborhood, conducive to raise a child. The couple makes a decent income from their income and businesses. When interviewed, they understand their responsibilities and obligations as adoptive parents. The report recommended them as good parents for the child having fulfilled the conditions set out in the [Act](#).



### **Suitability of the applicants for adoption**

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.”

13. The applicants are both above the age of 25 years. with regard to the higher age limit, the 1<sup>st</sup> applicant is 67 years old, above the age 65 years recommended in law. This takes away his eligibility as an adoptive parent. The 2<sup>nd</sup> applicant is below 65 years old.

14. They are both Kenyans and law-abiding citizens. They have also demonstrated their social and financial ability to take care of the child since their resources are sufficient.

### **Best interest of the child**

15. 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.”

16. The child 7 years old, being is above six (6) weeks old and below 18 years. This is the statutory requisite age bracket for a child to qualify for adoption under Section 184 (1) of the *Children’s Act*.

### **Report of the Child Adoption Society**

17. 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, KKPI Adoption Society provided a detailed report of its findings on the child together with the certificate declaring the child free for adoption. In their report, they stated that the minor has remained unclaimed since his rescue in 2018 and so it is in his best interest to declare him free for adoption under section 185(4)(c) of the *Children’s Act*.

### **Outcome of the First Application**

18. The documentation presented in court regarding the adoption of Baby N.B qualifies his adoption. However, the 1<sup>st</sup> 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. In the course of proceedings in this matter, the court noted that one of the applicants suffered a stroke and was hospitalized and remained bed ridden.



19. However, instead of dismissing the applicant's application, with the attendant negative and devastating consequences for the child - who had already established strong bonds with the applicants - the Court granted leave to the applicant to re-apply as a sole applicant. The Court was of the strong view that this was in the best interest of the child.

### **The Amended Application**

20. MMK re-applied for adoption as sole applicant through a further Amended Originating Summons dated 25<sup>th</sup> April, 2025. She retained the Guardian Ad Litem and Legal Guardian.
21. In addition, she availed the following:
- a. Form for Enquiry on prospecting Adoption from KKPI Adoption Agency;
  - b. Mpesa statement stamped 26<sup>th</sup> May, 2025.
  - c. Guardian Ad Litem Report dated 14/05/2025.

All these were in favour of the adoption of the child by the applicant as sole applicant. In the KKPI Form of Enquiry, the reason given for the change to sole applicant is that the applicant's husband, who was previously the first applicant and who had been ill and bed-ridden, had unfortunately passed on.

### **Conclusion and Disposition**

22. In the circumstances, the applicant qualifies to adopt the child as sole applicant, and such an order will be in the best interests of the child.
23. Accordingly, the Further Amended Originating Summons is allowed and orders are given as follows:
1. That the consent of the biological parents of the child named N.B is hereby dispensed with since he was rescued as an abandoned child.
  2. That the applicant is hereby authorized to adopt the said child named N.B.
  3. That the Court hereby issues an order renaming the child from N.B to PMM (PMM).
  4. That Peter Maina Kariuki is hereby appointed as the Legal Guardian of P.M.M.
  5. The Guardian Ad Litem, MKK is hereby discharged.
  6. That the Registrar do make the appropriate entries in the Adopted Children's Register in respect of PMM.
24. Orders accordingly.

**DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 29<sup>TH</sup> DAY OF MAY, 2025.**

**R. MWONGO**

**JUDGE**

Delivered in the presence of:

MMK – Applicant

Mary Karimi – Guardian Ad Litem

Francis Munyao - Court Assistant

