



**In re MK (Child) (Adoption Cause E001 of 2025)
[2025] KEHC 11417 (KLR) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11417 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
ADOPTION CAUSE E001 OF 2025
RM MWONGO, J
JULY 31, 2025**

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

IN THE MATTER OF

EMM 1ST APPLICANT

MWM 2ND APPLICANT

JUDGMENT

Background

1. In its judgment delivered on 21st May 2025, this court noted that the 1st applicant is above the age of 65 years; thus, an order of adoption could not be made to both applicants unless special circumstances had been disclosed.
2. Accordingly, in the best interest of the child, the Court directed that the file would remain open for a period of 3 months within which period the applicants would provide any special circumstances as to why an adoption order should be made in their favour. The court stated:

“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.”
3. Pursuant to these directions, the applicants have filed a joint affidavit in support of adoption under special circumstances as well as an addendum report on adoption by the Child Welfare Society of Kenya (CWSK) supporting adoption of the child by the applicants.

Affidavit of Special Circumstances

4. Through their affidavit, the applicants acknowledged that the 1st applicant was 68 years old while the 2nd applicant was 61 years old. Even though the law forbids a court to make an adoption order where one applicant does not meet the age requirement, the special circumstance in this case is that the applicants have been fostering the child since 03rd February 2016 to date. For these 9 years, the applicants have provided a loving, stable and supportive environment for the child and a bond has developed between them and the child.
5. They stated that they have met the physical, emotional, educational and social needs of the child and they continue to do so. That the 1st applicant's age has never hindered him from caring for the child at any given time. They urged this court to consider the best interests of the child in light of the special circumstances.
6. This affidavit was accompanied by the child's school report form and the child's baptismal card which indicates the applicants as her parents. Annexed to the affidavit is a letter from the child's school requiring that her birth certificate be provided to the school to enable her to register for national examinations since she is in grade 8.

Addendum Report by CWSK

7. The CWSK provided an addendum report dated 23rd June 2025 in support of the applicants' application for adoption. The report is given pursuant to section 186(5) of the *Children Act*. It stated that the 1st applicant's age has no detrimental impact on his ability to care for the child. Throughout the period of fostering the child, he has been actively involved in raising the child and providing for her needs consistently. The child is at a crucial age where her legal identity is necessary and it can only be granted through these adoption proceedings. The report stated that it was in the best interest of the child that an adoption order be made given the exceptional circumstances provided.



Analysis and Determination

8. Section 186(5) of the *Children Act* provides:

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

9. The court directed the applicants to provide any special circumstances that would enable it to exercise discretion in their favour. They indicated that they have been fostering the child for a period of 9 years so far. The child attends school with the support of the applicants and now the child needs to be registered for national examinations but she does not have a birth certificate. The circumstances of the child are that she must be formally adopted in order for a birth certificate to be issued in her name. The applicants are willing to adopt the child since they have bonded with her for 9 years already.
10. Article 53(2) of the *Constitution* elevates the best interest of the child in all matters concerning the child. The purpose of adoption proceedings is to ensure that children who need care, protection and a sense of family identity are settled in good homes where they will live a steady and peaceful life. This is why an adoption order may be made where special circumstances are disclosed. In this case, the best interest of the child can only be met through giving an adoption order even though the 1st applicant is beyond the prescribed age limit.
11. The applicants have demonstrated special circumstances which are that: they have fostered the child for 9 years already; and that the child had settled well within their care. Further special circumstances are found in the fact that the child is attending school and for her to attain basic education as required by the Constitution, she has to produce a birth certificate for enrolment in examinations at the school, which birth certificate can only be obtained through adoption proceedings.
12. In light of the foregoing, this court is of the view that it is in the best interest of the child that she be adopted by the applicants jointly, despite the fact that the 1st applicant has exceeded the prescribed age limit since special circumstances have been proved.
13. To that end, accordingly, the prayers sought are hereby granted as follows:
1. The applicants are hereby authorized to adopt MK, a minor;
 2. The consent of the biological parents is hereby dispensed with as the child was abandoned;
 3. Henceforth, the child shall be known as BRG;
 4. The Registrar General shall make the appropriate entry of BRG in the Adopted Children’s Register;
 5. The child BRG be presumed to be a Kenyan citizen born in Kenya and a birth certificate shall be issued to that effect by the Registrar of Births and Deaths;
 6. The Director of Immigration Services do issue BRG with a Kenyan Passport;
 7. The Guardian ad litem is hereby discharged; and
 8. That LMN is hereby appointed as the legal guardian of the child BRG.



14. Orders accordingly.

DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 31ST DAY OF JULY, 2025.

R. MWONGO

JUDGE

Delivered in the presence of:

1. E M - Applicant present
2. M M - Applicant present
3. Ms. Penina Wairima - CWSK
4. Francis Munyao - Court Assistant

