



**In re ZDWP (Baby) (Adoption Cause E256 of 2025)  
[2026] KEHC 2229 (KLR) (Family) (19 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 2229 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY**

**ADOPTION CAUSE E256 OF 2025**

**CJ KENDAGOR, J**

**FEBRUARY 19, 2026**

**IN THE MATTER OF AN APPLICATION FOR ADOPTION OF BABY ZDWP**

**IN THE MATTER OF**

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

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

**JUDGMENT**

1. Before this Court is the application dated 17<sup>th</sup> September, 2025. The Applicants ENG and DPY are seeking to be authorized to adopt Baby ZDWP hereinafter referred to as (“the child”) and upon adoption, the child is to be known as ZDWP. ANT be appointed as the child’s legal guardian upon granting of the adoption orders.
2. The Applicants are a married couple as evidenced by a copy of their marriage certificate and Kenyan citizens as evidenced by copies of their Kenyan National Identity Cards. DPY is a businessman and ENG is a businesswoman hence their financial capability and ability to provide for the child is evidenced by copies of their financial statements and they also have assets in their names. Their health status is good as is evidenced by the medical reports and they do not have any previous criminal records as is evidenced by their Certificates of Good Conduct issued by the Directorate of Criminal Investigations.
3. The Applicants have expressed their desire to adopt the child on account of the female Applicant’s inability to conceive naturally due to health-related complications. They wish to grow the family and also get an opportunity of becoming parents and this made them to opt for surrogacy. The surrogacy arrangement was legally made and both parties involved gave full and informed consent, while considering the rights and best interest of the child which were of paramount concern throughout the process.



4. The surrogate mother, BAO, told the Court that she understands that the adoption is permanent in nature and that she has voluntarily given up her rights over the child and that no one forced her, but she voluntarily offered herself as a surrogate.
5. ANT, the proposed Legal guardian is the Applicants' friend. She told the Court that she understands the proceedings in Court and the role of a legal guardian which she willingly agrees to undertake.
6. The report from the Ministry of Gender, Culture and Children's Services Directorate of Children Services dated 26<sup>th</sup> November, 2025 indicates that the child is female who was born on 16<sup>th</sup> May 2024. She is Kenyan, who was offered on 11<sup>th</sup> November 2024 by the biological mother called BAO based on the Surrogacy Agreement dated 8<sup>th</sup> June, 2023. The child was placed under the care of the prospective adoptive parents after 6 months and has since been under their care and protection in [Particulars withheld] area within Gilgil sub county in Nakuru county. The child was declared free for adoption on 27<sup>th</sup> November 2024 by KKPI Adoption Society vide freeing certificate number 0924.
7. The child is a Kenyan citizen by virtue of Article 14 (1) which provides that a person is a citizen by birth if on the day of the person's birth, whether or not the person is born in Kenya, either the mother or father of the person is a citizen.
8. In light of the best interests of the child principle provided for under Article 53 (2) of *the Constitution* of Kenya, 2010. Sections 8 (1), (2) and (3) of the Children's Act No. 29 of 2022 and the 1<sup>st</sup> Schedule of the Children's Act No. 29 of 2022, this Court has an obligation to prioritize the child's best interests in making decisions touching on him.
  - a. Article 53 of *the Constitution*, 2010 states that a child's best interests are of paramount importance in every matter concerning the child.
  - b. Sections 8 (1), (2) and (3) of the Children's Act No. 29 of 2022 provides as follows;
    1. In all actions concerning children, whether undertaken by public or private social welfare institutions, Courts of law, administrative authorities or legislative bodies:
      - a. The best interests of the child shall be the primary consideration;
      - b. The best interests of the child shall include, but shall not be limited to the considerations set out in the First Schedule.
    2. All judicial and administrative institutions, and all persons acting in the name of such institutions, when exercising any powers conferred under this Act or any other written law, shall treat the interests of the child as the first and paramount consideration to the extent that this is consistent with adopting a course of action calculated to: -
      - a. safeguard and promote the rights and welfare of the child;
      - b. conserve and promote the welfare of the child; and
      - c. secure for the child such guidance and correction as is necessary for the welfare of the child, and in public interest.
    3. In any matters affecting a child, the child shall be accorded an opportunity to express their opinion, and that opinion shall be taken into account in appropriate cases, having regard to the child's age and degree of maturity.
  - c. The First Schedule as provided for under Section 8 (1) of the Children's Act No. 29 of 2022 provides best interests considerations to be as follows:



1. The age, maturity, stage of development, gender, background and any other relevant characteristics of the child.
2. Distinct special needs (if any) arising from chronic ailment or disability.
3. The relationship of the child with the child's parent(s) and/or guardian(s) and any other persons who may significantly affect the child's welfare.
4. The preference of the child, if old enough to express a meaningful preference.
5. The duration and adequacy of the child's current living arrangements and the desirability of maintaining continuity.
6. The stability of any proposed living arrangements for the child.
7. The motivation of the parties involved and their capacities to give the child love, affection and guidance.
8. The child's adjustment to the child's present home, school and community.
9. The capacity of each parent or guardian to allow and encourage frequent and continuing contact between the child and the other parent and/or guardian(s), including physical access.
10. The capacity of each parent and/or guardian(s) to cooperate or to learn to cooperate in child care.
11. Methods for assisting parental and/or guardian cooperation and resolving disputes and each parent's/guardian's willingness to use those methods.
12. The effect of the child if one parent/guardian has sole authority over the child's upbringing.
13. The existence of domestic abuse between the parents/guardian(s), in the past or currently, and how that abuse affects the emotional stability and physical safety of the child.
14. The existence of any history of child abuse by a parent and/or guardian(s); or anyone residing in the same dwelling as the child.
15. Where the child is under one year of age, whether the child is being breast- fed.
16. The existence of a parent's(s) or guardian's(s) conviction for a sex offense or a sexually violent offense under the *Sexual Offences Act*.
17. Where there is a person residing with a parent or guardian, whether that person; -
  - a. Has been convicted of a crime under this Act, the *Sexual Offences Act*, the Penal Code or any other legislation.
  - b. Has been adjudicated of a juvenile offence which, if the person had been an adult at the time of the offence, the person would have been convicted of a felony.
18. Any other factor which may have a direct or indirect effect on the physical and psychological well -being of the child.



9. The report from the Ministry of Gender, Culture and Children's Services Directorate of Children Services, the report from the KKPI Adoption Society, the guardian ad litem and the proposed legal guardian indicate that the child is well known to the adoptive parents and that she will be well taken care of in their care and custody.
10. I am satisfied that the Applicants have a genuine desire to adopt the child. They are suitable as adoptive parents.
11. I find that this adoption gives the child a chance at a better life and education in a loving and stable home with the adoptive parents. I do not doubt that the child has bonded with the Applicants.
12. Based on the foregoing, I am satisfied that this adoption serves the child's best interests. As such, I do allow this application and make the following orders:
  - a. The Applicants ENG and DPY are hereby authorized to adopt the child known as baby ZDWP.
  - b. Upon adoption, the child shall be known as ZDWP.
  - c. The child is presumed to have been born in Kenya.
  - d. ANT is hereby appointed as the legal guardian of the child.
  - e. The Registrar General is directed to enter the adoption in the Register of Adoptions.
  - f. The guardian ad litem is hereby discharged.
13. It is so ordered.

**DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 19<sup>TH</sup> DAY OF FEBRUARY, 2026.**

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**C. KENDAGOR**  
**JUDGE**

In the presence of:

Court Assistant: Beryl

Advocate:

