



**In re DU (Baby) (Adoption Cause E182 of 2023)
[2024] KEHC 2045 (KLR) (Family) (29 February 2024) (Judgment)**

Neutral citation: [2024] KEHC 2045 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E182 OF 2023
HK CHEMITEI, J
FEBRUARY 29, 2024**

IN THE MATTER OF

**SML 1ST APPLICANT
LNW 2ND APPLICANT**

JUDGMENT

1. Before this Court is the application dated 12th September, 2023. The Applicants SML and LNW are seeking to be authorized to adopt Baby DU hereinafter referred to as the child and upon adoption, the child is to be known as DU. DSL and IRR were appointed as the child’s legal guardian upon granting of the adoption orders.
2. The Applicants are a married couple and Kenyan citizens as is evidenced by a copy of their marriage certificate. They are both employed persons whose financial capability and ability to provide for the child are evidenced by their payslip, Mpesa and bank statements. Their health status is good as is evidenced by their 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. They have indicated their desire to adopt the child by virtue of their desire to expand their family and give the child a home to grow and thrive in and that the child, previously abandoned, has been in their custody since 16th December, 2022.
3. The report from the Ministry of Labour and Social Protection State Department of Social Security & Protection – Department of Children’s Services (Nairobi County) dated 19th December, 2023 indicates that the child is male and 1.9 years old. He is Kenyan, whose biological parents are unknown having been abandoned after birth; and born at Kisumu East Sub - County in Kenya. The child was declared free for adoption on 22nd November, 2022 by Buckner Kenya Adoption Society vide freeing certificate number xxxx.



4. There is consistent message that there is the urge for SML and LNW to have children of their own and their motivation to provide for an abandoned child and to him a home.
5. 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.
6. 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 1st 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 her.
 - 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.
7. The report from the Ministry of Labour and Social Protection State Department of Social Security & Protection – Department of Children's Services (Nairobi County), the report from the Kenyans to Kenyans Peace Initiative (KKPI) Adoption Society, the guardian ad litem and the proposed legal guardians indicate that the child is well known to the adoptive parents and that he will be well taken care of in their care and custody.
 8. 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.
 9. In the circumstances, I allow the Originating Summons dated 12th September, 2023 and make the following orders:



- (a) The Applicants SML and LNW are authorized to adopt the child known as DU.
- (b) Upon adoption, the child shall be known as DU.
- (c) The child is declared to be a Kenyan citizen by birth and is entitled to all rights and benefits under the Constitution of Kenya, 2010 and all applicable laws.
- (d) DSL and IRR are appointed as legal guardians of the child.
- (e) The Registrar General is directed to make the relevant entries in the Adopted Children's Register in respect of the child.
- (f) The Registrar of births and deaths is directed to issue a birth certificate in respect of the child's new name.

DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 29TH DAY OF FEBRUARY 2024.

H. K. CHEMITEI

JUDGE

In the presence of:

Ms. Kimenyi for the Applicants.

Ahmed Mohamed – Court Assistant.

