

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

DAR ES SALAAM SUB-REGISTRY

MISC. CIVIL CAUSE NO. 521 OF 2023

IN THE MATTER OF THE LAW OF THE CHILD ACT (CAP 13 R.E.2019)

AND

IN THE MATTER OF IBRAHIM SUPHIAN, A CHILD OF DAR ES SALAAM

AND

**IN THE MATTER OF THE APPLICATION FOR AN ADOPTION ORDER
BY DAUDI EUSEBIO KITOSI AND JOYCA SHILEKIRWA MAKERE OF
KIMARA-KILUNGULE "B", UBUNGO, DAR ES SALAAM.**

RULING

Date of last Order: 11-3-2024

Date of Ruling: 20-3-2024

B.K.PHILLIP, J

Daudi Eusebio Kitosi and Joyca Shilekirwa Makere lodged this petition seeking an adoption order in respect of Ibrahim Sufian (Henceforth "Ibrahim" or "adoptive child"). The application is accompanied by an affidavit sworn by the applicants verifying the same and copies of the petitioners' national identification cards, an introduction letter from Ubungu Municipal Council, petitioners' birth and marriage certificates, letters from the Ministry of Community Development, Gender, Women and Special Groups allowing the applicants to foster the adoptive child and to file this application are attached thereto. At the hearing of this petition, the learned Advocate, Dr. Veronica Buchumi appeared for the

petitioners. The Social Welfare Officer, Ms. Caren Mitta filed in court her expert report and attended at the hearing of this petition.

At the hearing of this petition, Dr. Buchumi started her submission by adopting the contents of the petition and the accompanying affidavit. Her submission put into light the following; the petitioners, Daudi Eusebio Kitosi and Joyca Shilekirwa are Tanzanians, born on 18th June 1970 and 12th January 1968 respectively. They are desirous of adopting Ibrahim an infant, who was found abandoned along the road in Majohe area, Dar es Salaam Region, in 2020 at the age of approximately three (3) days and was rescued by the good Samaritan. He was taken to the Msimbazi Orphanage Center where he was received and given the name Ibrahim Suphian. Police investigations confirmed that the whereabouts of his biological parents are unknown. The petitioners sought and obtained approval from the Commissioner for Social Welfare to foster Ibrahim in 2022. Thus, since 2022 to date Ibrahim has been under the custody of the petitioners. He has not been the subject of an adoption order or an application or petition for adoption. If this petition is granted, the petitioner undertakes to take care of Ibrahim and provide for him with the necessary and appropriate maintenance, and education. The petitioners have not received or agreed to receive or promised any reward in consideration of the adoption of the adoptive child. The petitioners request the adoptive child to be known by the name of Francis Daudi Kitosi in the event this petition is granted.

Upon being invited to address this court, Ms. Mitta, the Social Welfare Officer started her submission by adopting the contents of her expert report. Her submission and the contents of the expert report reveal the following information; Ms. Mitta was appointed as a *guardian ad litem* of

the adoptive child. The date of birth of the adoptive child is 26th September 2020. The petitioners, Daudi Eusubio Kitosi and Joyca Shilekirwa are a couple. Their marriage is blessed with two children namely; Agnes Pamela Daudi Kitosi and Eusubio Daudi Kitosi. Also, they are guardian in the faith of Lilian Urasa. They started the process of adopting the adoptive infant by lodging their application to foster him at the Ilala Municipal Council. Their application was granted by the Commissioner for Social Welfare on 15th February 2022. Since then they have been taking care of the adoptive child up to date. Daudi Eusubio Kitosi is employed at Nas-Dar Airco Company Limited whereas Joyca Kilekirwa is a teacher at Urafiki Primary School. The petitioners also deal with animal husbandry. They have a stable monthly income of an average of Tshs 5,380,000/=. Thus, they are capable of taking care and providing for the maintenance of the adoptive child as well as their biological children. Ms.Mitta used to visit the petitioners and observed that the adoptive child was in good condition. Upon asking the petitioners the reason behind petitioning to adopt the adoptive child while they have their biological children, their response was to the effect that they are doing this out of the moral obligation to take care of orphans and vulnerable children since they believe they are obliged to do so. Currently, the adoptive child is enrolled at Trust Day Care Center. The petitioners' biological children, Eusubio Daudi Kitosi and Agnes Pamela Daudi Kitosi are aware of the petitioners' intention to adopt Ibrahim and are willing Ibrahim to be part of their family.

In conclusion of her submission, Ms. Mitta implored this court to grant this application as the petitioners have met all the legal requirements to be allowed to adopt Ibrahim. She was confident that the petitioners are

suitable persons to adopt Ibrahim and that granting this petition would be in the interests of the adoptive child as he needs to have family ties.

From the foregoing, the task of this Court is to determine the following issues; one, whether the petitioners qualify to be granted the adoption order sought. Two, Whether it is in the best interests of the child to be adopted, and three to what reliefs are the parties entitled to.

Starting with the first issue, having dispassionately analyzed the submissions made by both Dr. Buchumi and Ms. Mitta as well as the contents of the petition and the expert report filed in court by Ms. Mitta, I hasten to say that the petitioners qualify to be granted the adoption order sought in this petition. As alluded to earlier in this petition, the petitioners are a couple, Tanzanian, and have a well-established family as per the expert report filed in court by the Social Welfare Officer. I have no reason to doubt the expert report which is in favor of the petition. The petitioners appeared in court in all sessions. Their conduct signified their commitment and great interest in adopting the adoptive child. Not only that, I had an opportunity to talk to Ibrahim, when he was brought in court in one of the court sessions before the hearing of the petition. He was in good condition and was able to respond to the questions I posed to him and, in response to one of the questions he identified the petitioners as his parents. The joint affidavit sworn by the petitioners proves that the petitioners understand their responsibilities in the event this court grants them the adoption order. It is also worth noting that the petitioners have complied with all the required legal procedures for the grant of the adoption order.

Coming to the second issue, the position of the law is that an adoption order issued by the Court should be in the best interest of the adoptive child. Looking at the background of Ibrahim, I am convinced that granting the adoption order is in the best interest of the adoptive child since he needs to stay in a family and create family ties as well as enjoy parental care. I have noted that for all the time he has been under the custody of the petitioners he has been happy, enjoying family life with the petitioners, and has been enrolled in school (kindergarten). The petitioners have a stable income, thus capable of providing for the necessities of the adoptive child and their biological children.

In the upshot, this petition is granted. I hereby order as follows;

- i) The petitioners Eusubio Daudi Kitosi and Joyca Shilekirwa Makere are hereby authorized to adopt Ibrahim Suphian and after the adoption order, Ibrahim Suphian will be known as Francis Daudi Kitosi.
- ii) It is further directed that the Registrar General of Birth shall make an entry to that effect in the registrar of the adopted children according to section 70 (1) of the Law of the Child Act, 2009.
- iii) Costs of this petition shall be borne by the petitioners.



Dated this 20th day of March 2024


B.K.PHILLIP

JUDGE