



MEDIA STATEMENT | 22 OCTOBER 2026

SUPREME COURT OF APPEAL AFFIRMS WOMEN'S RIGHT TO CHOOSE ADOPTION

Adoption Guidelines are Unconstitutional

The Women's Legal Centre (WLC) welcomes the judgment from the Supreme Court of Appeal (SCA), which has dismissed an appeal by the Minister of Social Development against the judgment in *Minister of Social Development and Others v TT and Others* [2026] ZASCA 142.

The SCA judgment upholds the High Court's findings that the conduct of government social workers in two adoption cases was unlawful and unconstitutional, and that the Department of Social Development's Practice Guidelines on National Adoption were inconsistent with the law.

This case arose from the decisions of two women to place their children for adoption and was brought to the court's attention when government social workers interfered with the adoption processes, caused undue delays and violated the two women's rights to privacy, dignity and reproductive autonomy.

The two women had voluntarily chosen adoption as is their legal right, but were then harassed by DSD social workers and forced to consider alternative child care options they had expressly provided they did not want. DSD also went on to disclose the private details of the adoptions to people the women did not want involved in the process, frustrated their adoption proceedings and, at several points, made alternative care arrangements for the children without the women's knowledge and consent, as they did not agree with the women's choice to place their children up for adoption.

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The High Court had originally found that DSD's intervention in and frustration of the adoption processes was unlawful and a violation of the women's rights to privacy and dignity, and the SCA judgment has now confirmed this finding. It was also additionally found that DSD could not introduce additional adoption requirements through its own guidelines that are not in the Children's Act and that, because the adoption guidelines did this, they were unconstitutional and unlawful.

Importantly, the SCA in its judgment also rejected the contention that a child's connection to their biological family, culture or community must automatically take priority in adoption decisions. These are factors that may be relevant, but none is decisive in every case. As the Court explained, "The overarching consideration is the best interests of the child. The focus is on suitability, rather than relation, marital status or income." The Court thus emphasised that the circumstances of each child must be considered individually, rather than applying a rigid formula that may disregard the child's actual needs and relationships. This judgment is also an important affirmation of women's reproductive autonomy. The decision to place a child for adoption is a deeply personal one. Women who make this decision lawfully are entitled to have their choices respected, and protected including their rights to dignity and privacy. The state cannot override those choices simply because officials believe that a different family arrangement is more preferable to the state. Nor can the best interests of the child be used to circumvent lawful processes and justify unlawful interference or a failure to follow the law.

WLC has consistently raised concerns about adoption practices that prioritise placement with biological or extended family members without properly considering the wishes and rights of birth mothers, or the individual circumstances of the children concerned. We have and continue to call for stronger legal protection for the rights of birth mothers to choose adoption and to exercise that choice privately and confidentially.

This judgment thus reinforces the need for an adoption system that respects women's rights, follows the law and places the best interests of each child at its centre.

This judgment is significant beyond these two cases as it makes clear that the Department must act within the authority given to it by law and that its officials cannot use administrative practices to undermine lawful adoption processes or the constitutional rights of the people involved.

We wish to acknowledge TT and BM for their determination in pursuing this matter and for standing up for their rights (and the rights of other women similarly placed) in the face of prolonged and intrusive interference.

We also wish to thank our external counsel team throughout these proceedings, Advocates Melanie Abro, Nyoko Muvangua and Nikki Stein.

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About the Women's Legal Centre

The Women's Legal Centre is an African feminist public interest law organisation that advances women's rights in South Africa through strategic litigation, advocacy and education.

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