

TANZANIA / JUDGMENT

in the matter of an application for an adoption order by happiness marcel lyamuya 2023 tzhc 23178 7 december 2023

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TZHCDECIDED
7 December 2023

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA MOSHI DISTRICT REGISTRY AT MOSHI MISCELLANEOUS CIVIL CAUSE NO 05 OF 2023 IN THE MATTER OF THE LAW OF THE CHILD ACT [CAP 13 R.E 2019] ADOPTION OF CHILDREN REGULATIONS 2011, GN NO 197 OF 2011 AND IN THE MATTER OF AN APPLICATION FOR AN ADOPTION ORDER BY HAPPINESS MARCEL LYAMUYAPETITIONER AND IN THE MATTER OF GIFT..... INFANT

RULING

7th December, 2023. A.P.KILIMI, J.: The petitioner one Happiness Marcel Lyamuya lodged this application seeking an adoption order in respect of the child one GIFT. In her duly sworn affidavit in supporting this petition, she has averred that, she is an adult residing at Moshi Township, and working for gain as business woman. When this application came for hearing before me, the Social Welfare Officer one Edita A. Kilenga told this court that she was appointed by The Commissioner for Social Welfare to be Guardian Ad litem. She then testified 1 She has already filed the social investigation report in this court, the report has explained in detail about the adoption of the said child. She further said the petitioner came in their office since December 2016 praying to be given a child as foster care, in 2017 January she did social inquiry to the applicant and sent the report to social welfare office at Dodoma. Later they received permit from the Commissioner that is allowed, then she went to Neema orphanage and got a child there. He was a child boy named as Gift, by then was having 6 months, thus the petitioner took the child on 1/2/2021. She added that as a Guardian Ad litem used to visit her and she did well in caring the child. On 27/7/2022 in her office received a letter from the commissioner permitting the petitioner to adopt the child from foster care. The social welfare officer further said, in her investigation since it is a long time and the child is under foster care and is going well, prayed this court to allow the applicant to adopt the child. In respect to the petitioner, she has said she has stayed under foster care with child more than two years and as said by social welfare she is able and assure this court to make the child grow in health and spiritual manner, thus prayed her prayer be granted. 2 Having considered the submission above, I have paid regard that this application is being supported by certificate of Police Clearance letter with Ref. MOS./

A.18/9A/100 dated 15/04/2020; two letters from Ministry of Health, Community development, Gender, Elders and Children with reference no. APPL. No. 6026/2017/7 dated 11/9/2020 and letter no. APPL. No. 6026/2017/08 dated 25/1/2021; and the letter from the Ministry allowing the petition to adopt the child with Ref. No. Appl. No. 6026/2022/10 dated 27/7/2021. I have also considered the social Investigation report which reveals that currently, the child is staying with Petitioner as Foster Care since 2021 after she followed legal procedure from the Ministry, is unmarried, is healthy and has no mental problem. Also, the petitioner is a Tanzanian and this is proved by the attached birth certificate as annexure 5. Having grabbed the above evidence, the point of consideration is whether the petition meets the requirements of the law for the child to be adopted, and by doing so whether the child will be at the best interest of the child. In responding this, I wish to be guided by the Law of the Child Act No. 21 of 2009 (hereinafter "the Act") as well as the Adoption of a Child 3 Regulations, GN No. 197 of 2012. According to section 4 (2) of the Law of the Child Act No.21 of 2009 states that: - " The best interest of a child shall be the primary consideration in all actions concerning a child whether undertaken by a public or private social welfare institutions, courts or administrative bodies". Moreover, Section 56 (1) and, (3) and 52(2) of the Act provides that: - " s.56 (1) an adoption order shall not be made unless the applicant or, in the case of a Joint application, one of the applicants:

- (a) is of or above twenty - five years of age and at least twenty-one years older than the child.
 - (b) Is a relative of the child and is above the age of twenty-five.
 - (c) In case of application by one of the spouses, the other party has consented to the adoption; or
 - (d) a single woman where the applicant is a citizen of Tanzania and with due regard to the best interest of the child.
- (3) An adoption order shall not be made for a child unless:
- a) the applicant and the child reside in Tanzania but this shall not apply if the applicant is a citizen of Tanzania resident abroad, 4
 - (b) child has been continuously in the care of the applicant for at least six consecutive months immediately preceding the date of the submission of the application; and
 - (c) the applicant has notified the Commissioner for Social Welfare of his intention to apply for an adoption order for the child at least three months before the date of the order." s.59 (2) Notwithstanding subsection (1), the court shall not make an adoption order unless there is a social investigation report prepared by the Social Welfare Officer supporting the application for adoption." I have considered the evidence above, it has been established with approval that the petitioner applied for foster care of the child and granted, she has stayed with the child for more than two years to date. The social welfare officer after the conduct of investigation, reported that the child under the hands of the petitioner is living in a favorable condition and get all necessary needs. In her report he has said the petitioner is a business woman and own her house of three bedrooms, The officer also recommended that

if the child is to be adopted by the petitioner for the best interest of the child will be enhanced. 5 In view of the evidence, I am satisfied that, the petitioner followed and complied with all the requirements needed in adoption as directed under section 56 and 59 of the Act. As the record shows that the child has no parent neither any relative showed up to this moment, and as said above the child is already stayed with the petitioner for more than two years now, then no need of consent from the parents as the petitioner is now acting as a parent. Having considered and evaluated above as per requirements of the law, I am of settled view for the safeguard and welfare of the child has been proved will be protected by the Petitioner. In that regard I am therefore satisfied that it is in the best interest of the child that an adoption order be granted as prayed. In conclusion thereof, I proceed to grant the Petition, and Ms. HAPPINESS MARCEL LYAMUYA, the Petitioner is authorized to adopt the infant GIFT. Thus, the Registrar General of Birth is hereby directed to cause such an entry to be made in the register accordingly. No order as to the costs. Order accordingly. 6 DATED at MOSHI this 7th day of December, 2023. X JUDGE Signed by: A. P. KILIMI Court: Ruling delivered today on 7th day of December 2023 in the presence Edita A. Kilenga (Gurdian Ad Litem) also Petitioner present. Sgd: A. P. KILIMI JUDGE 18/09/2023 7

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