

UGANDA / JUDGMENT

In Re: A M (a minor) (Adoption Cause No 12 of 2017) [2017] UGHCFD 9 (6 June 2017)

[2017] UGHCFD 9

COURT

HC: Family Division (Uganda)

BEFORE

Tuhaise, J

CASE / FILE NUMBER

Adoption Cause No 12 of 2017

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THE REPUBLIC OF UGANDA**IN THE HIGH COURT OF UGANDA AT KAMPALA****ADOPTION CAUSE NO 12 OF 2017****IN THE MATTER OF THE CHILDREN AMENDMENT ACT 2016****IN THE MATTER OF A M****AND****IN THE MATTER OF A PETITION FOR ADOPTION BY S S M AND A M M****BEFORE HON LADY JUSTICE PERCY NIGHT TUHAISE****RULING**

This is a petition for adoption of a minor, A M, brought by S S M and A M M. The petitioners are petitioning this court to allow them adopt the child A M under the provisions of the Children (Amendment) Act 2016 Laws of Uganda.

The petition is supported by the affidavits of the two petitioners. In addition, this court requested for additional documents including the child's medical report and identification papers of the petitioners' relatives. Learned Counsel Stella Ogwal filed written submissions on behalf of the petitioners.

The background is that the child, A M was found abandoned on 11th July 2012 in Kisenyi Zone, Kyebando, Kawempe. She was taken to the home of Mr. Ouma Rogers and Sophia Nassiwa where she stayed for five days. The matter was reported to Kawempe Police Station vide REF/SD/59/11/07/12. A number of people from the neighbourhood were interviewed, in addition to placing radio announcementson CBS and in Bukedde newspaper. The child was eventually

admitted at Sanyu Babies Home. The petitioners applied to Sanyu Babies Home to adopt the child. On 31st January 2013 a legal guardianship order was granted to the petitioners vide Family Cause No 287/2012.

This petition was addressed by this court along the following issues:-

Issue 1: Whether the High Court is seized with the jurisdiction to entertain the matter?

Section 44(1) (b) of the Children Act as amended by the Children (Amendment) Act 2016 provides that an application for an adoption order may be made to the High Court where the child or the applicant is not a citizen of Uganda, and court may, subject to the said Act, grant the application. This court therefore has the jurisdiction to hear and determine this application.

Issue 2: Whether the petitioners qualify to be appointed the adoptive parents of the child?

Section 45(1)(a) of the Children Act, as amended in 2016, provides that an adoption order may be granted to a sole applicant or jointly to spouses where the applicant or at least one of the applicants has attained the age of **twenty five years** and is **at least twenty one years older than the child**. Section 46 of the same Act provides that a person who is not a citizen of Uganda may, in exceptional circumstances, adopt a Ugandan child if he/she **has stayed in Uganda for at least one year**; has **fostered** the child for **at least one year** under the supervision of a Probation and Social Welfare Officer (PSWO); does not have a criminal record; has a recommendation concerning his/her suitability to adopt from his/her country's PSWO or other competent authority; and has satisfied the court that his/her country of origin will respect and recognize the adoption order.

The adduced evidence shows that the 1st petitioner **S S M** is a Ugandan. The 2nd petitioner **A M M** is an American Citizen of Ugandan descent. They are married to each other as evidenced by a certified copy of the marriage certificate annexed to the petition. **S S M** is aged 45 years and one month, having been born in Uganda on 29th April 1972. His wife, **AM M** the 2nd petitioner is aged 46 years and three months, having been born in Uganda on 19th February 1971. This is adduced from copies of their birth certificates and passports annexed to their respective affidavits. The child **A M** is revealed by the copy of her birth certificate on the court record to have been born on 11th July 2012. She is currently aged four years and eleven months. This makes each of the petitioners, who are both above 25 years, to be more than 21 years older than the child. Thus the applicants fall within the age requirements spelt out under section 45(1)(a) of the Children Act as amended.

One of the petitioners (2nd petitioner) is a citizen of the United States of America (USA). This places the petitioners within the legal requirements of section 46 of the Children Act as amended, since one of them is non citizen of Uganda. The petitioners are both employed. This is adduced from the report of the PSWO of Kampala City Council Authority dated 29th March 2017. Both petitioners are stated to be in good health as indicated in the medical reports from Nakasero Hospital Ltd and the Aga Khan University Hospital dated 26th July 2016 and 14th December 2016 respectively.

The affidavit evidence on record shows that the petitioners have lived in Uganda since December 2015 to date, having previously lived in the USA, United Kingdom (UK), Switzerland and South Africa. They have been in actual custody of the child since 31st January 2013 when they were granted a guardianship order in respect of the child vide Family Cause No 287/2012. Thus, though the 2ndpetitioner is not a citizen of Uganda, she has stayed in Uganda for more than the required one year, and she and her husband the 1st petitioner fostered the child under the supervision of a PSWO for more than the required one year.

There is evidence that the applicants have been living with the child as a family. The certificates of good conduct by the National Central Bureau of Interpol Kampala dated 19/12/2016 and 15/05/2017, which are on the court record, show that the petitioners do not have a criminal record. The PSWO, who is also the officer in Charge of Orphans and Vulnerable Children, Kampala City Council Authority (KCCA) **Angabire Patience**, in her report on record, recommended the applicants as suitable persons to adopt the child. The petitioners have also availed a copy of the guardianship order issued by this court appointing the petitioners legal guardians of the child. There is also a medical report that the child's health is good, and that they have not had many challenges or problems with the child. This makes them fully compliant with the requirements in section 46 of the Children Act.

Under section 47 of the Children Act, the consent of the child's parents is necessary if the parents are known, but it may be dispensed with if the parents are incapable of giving it. The adduced evidence shows that the child's parents are unknown. The child was found abandoned in Kisenyi Zone, Kyebando, Kawempe. According to the report of the PSWO, numerous attempts were made to trace the child's birth family, including investigations, use of radio and newspaper notification, but they all yielded no positive results. In this case the parents' consent will be dispensed with since the child's parents are not known.

The petitioners therefore qualify to be appointed the adoptive parent of the child.

***Issue 3:Whether the application is in the best interests of the child*?**

Section 3 and the first schedule of the Children Act provide that the welfare principle shall be of paramount consideration when making decisions concerning children. The court shall in particular have regard to the ascertainable wishes and feelings of the child concerned considered in light of his/her age and understanding; the child's physical, emotional and educational needs; the likely effect of any changes in the child's circumstances; the child's age, sex, background and any other circumstances relevant in the matter; any harm that the child has suffered or is at the risk of suffering; and where relevant, the capacity of the child's parents, guardians or others involved in the care of the child in meeting his/her needs.

The evidence adduced before this court shows that the child's parents are not known. The petitioners have taken actual custody of the child through a Guardianship Order. The child could not talk for herself because, at four years, this court considered her to be of tender age. The petitioners plan to raise the child as their daughter and give her education. They have one biological daughter who, according to the certified copy of the birth certificate, was born on

08/07/2009. This makes her seven years and eleven months at the time of this ruling. The petitioners and the two children live as a family according to the letters reference number MUC 567/5/17 dated 13/01/2017 signed by Yasin Omari as Chairperson of Muyenga Hill V. U Council. The petitioners stated in their joint petition that they were neither given nor did they give anything as consideration to adopt the child.

The foregoing circumstances, in my opinion, are exceptional circumstances rendering the child A M whose parents or relatives are not known, to be very vulnerable and in need of a home, care and love. The child does not have a place to call home other than the petitioners' home. The petitioners, who are already legal guardians of the child, are availing her all necessities of life including education opportunities.

The Constitution of Uganda and the Children Act stipulate that a child has a right to have a home and be cared for. The petitioners are able and willing to avail such home to the child, having already been appointed her legal guardians on 31st January 2013. They are already living with the child as a family under a guardianship order. The petitioners state in their petition and affidavits that they have returned home and they intend to stay in Uganda indefinitely. The 2nd petitioner further states in her supplementary affidavit that the adoption order if granted will be recognized and respected in the USA. In that respect I would agree that this application is in the best interests of the child, and that the said child be adopted by the petitioners who are already her legal guardians.

In the circumstances, based on the adduced evidence and the relevant laws, and for reasons given, I am satisfied that the petitioners have complied with the legal requirements to adopt the child, and that the adoption will be in the best interests of the child.

It is accordingly ordered as follows:-

1. An order for the adoption of the child A M by the petitioners S S M and A M M be issued.
2. The petitioners shall be allowed to change the child's name from A M to A S N M.
3. The Registrar General of Births and Deaths shall make an entry recording this adoption in the Adopted Children Register.
4. The adoption order shall be furnished to the Consular Department in the Ministry of Foreign Affairs Kampala.
5. Costs of the petition shall be provided for by the petitioners.

Dated at Kampala this 6th day of June 2017

Percy Night Tuhaise

Judge.

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