

UGANDA / JUDGMENT

## In Re: Biyinzika Joseph (Adoption Cause No. 1 of 2018) [2018] UGHCFD 14 (2 October 2018) [2018] UGHCFD 14

COURT

HC: Family Division (Uganda)

BEFORE

Elubu, J

CASE / FILE NUMBER

Adoption Cause No. 1 of 2018

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**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA HOLDEN AT JINJA**

**ADOPTION CAUSE No. 01 OF 2018**

**IN THE MATTER OF THE CHILDREN (AMENDMENT) ACT, 2016**

**AND**

**IN THE MATTER OF BIYINZIKA JOSEPH - A MINOR**

**1. ROBERT JASON SEGNER 2. KARI PENROSE SEGNER**

**PETITIONERS \$ \cdots \cdots \cdots \cdots \cdots \backslash \$**

**BEFORE: THE HON. JUSTICE MICHAEL ELUBU**

**RULING**

The Petitioners, ROBERT JASON SEGNER and KARI PENROSE SEGNER bring this Petition for the adoption of BIYINZIKA JOSEPH (a minor).

The petition is supported by affidavits sworn by the petitioners and others.

## Background

Biinzika Joseph, the child, in this matter was born on the 27<sup>th</sup> of April 2010 to BABIRYE MARION (the birth mother), then aged 16 years and living with her grandmother in Muguluka village, Mukikade in Jinja District. It is alleged that the mother was defiled by one NABONGO also a resident of the same village who denied responsibility and fled and not been seen since. Marion is epileptic which posed challenges regarding her ability to care for the child. Joseph on the other hand was born with Microcephaly, a rare nervous system disorder that causes the baby's head to be small and not fully developed.

As a result the child was admitted in the Welcome Home Children Ministries where the petitioners met him and eventually had a Foster Care Order and subsequently Legal Guardianship granted to them in respect of the child.

The petitioners are an American couple living at Plot 19 Nile Crescent in Jinja Municipality in Jinja District.

ROBERT JASON SEGNER was born on the 29<sup>th</sup> of October 1976. KARI PENROSE SEGNER was born on the 21<sup>st</sup> of March 1977. They were married on the 13<sup>th</sup> of October 2001 and have four biological children between the ages of 7 and 13 years. The couple moved to Uganda in January 2012 and have largely lived here since. Jason Segner established an NGO called Healing Faith Uganda where he works.

On the 24<sup>th</sup> of June 2014 the petitioners were granted a Legal Guardianship Order and now bring this application for grant of an Order of Adoption for the Child.

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The issues for the determination in this Court are:

- Whether this Court has jurisdiction to grant the orders prayed for. \$i.\$
- Whether the Petitioners qualify for an adoption order of the child. ii.
- Whether such order would be in the best interest of the child. iii.

### **Whether this Court has jurisdiction to grant the orders prayed for. \$i.\$**

Section 44(1)(b) of The Children Act (Cap 59) requires that applications for adoptions by non-citizens of Uganda shall be made to and handled by the High Court.

Then Article 139(1) of The Constitution of The Republic of Uganda gives the High Court of Uganda unlimited original jurisdiction in all matters.

In the circumstances, as the petitioners as holders of American passports are citizens of the United States of America, and the mandate to handle an application of this nature lies with this Court.

**Whether the Petitioners qualify for an adoption order in respect of the ii. child.**

The law on adoptions states that the applicants must have attained 25 years of age and be at least 21 years older than the child. This provision relates to any application made for an adoption.

Here ROBERT JASON SEGNER was born on the 29<sup>th</sup> of October 1976 making him 42 years old. KARI PENROSE SEGNER's birthday is the 21<sup>st</sup> of March 1977. She is 41 years of age. Biyinzika Joseph (the child) was born on the 27<sup>th</sup> of April 2010 making him 8 years old today. The petitioners are all at least 33 years older than the child and both clearly satisfy the age difference the law requires as they are both over 25 years of age today and are both at least 21 years older than the child.

This is a joint application. The Children's Act stipulates that there be spousal consent where one of a couple makes an application for adoption. In this instant case however

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the application is joint and the Court is satisfied that mutual spousal consent is implied. The consent is also evident from the manner in which the application is brought and the evidence adduced in the accompanying affidavits. All show that this application is supported by both applicants.

What is laid out above are the general preconditions for all types of adoptions whether they be in or inter Country.

The specific conditions for an inter country adoption are found in Section 46 of the Children Act and include evidence to show that the petitioners have lived in Uganda for a period of not less than a year; that they have fostered the child for at least one year; that they do not have a criminal record; that they have a report from the Probation and Social Welfare of their country showing suitability to adopt a child; that they satisfied the Court that their country of origin will recognise and respect the adoption order; that where the parents of the child are known, it is necessary for their consent to be given.

The evidence in this case shows that petitioners have lived in Uganda since January of 2012. That makes a period of six years and eight months of stay in the country. On the 24<sup>th</sup> of June 2014 their application for Legal Guardian Ship was granted. A foster order had been given prior, on the 26<sup>th</sup> of September 2013. The child has therefore been in the legal custody of the applicants for over 4 years.

With regard to whether the applicants have criminal records either here in Uganda or in the USA, both attached certificates of good conduct from Interpol Uganda. The ruling on the legal guardianship had earlier made an assessment of their criminal background checks in the USA and found no criminal records.

I have perused the attached report of the Probation and Social Welfare officer in Jinja Uganda who studied the suitability of the applicants to adopt a child from this

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country. His report concludes that the applicants were suitable candidates for the adoption of the child.

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There is also a detailed home study filed by a licensed foreign exempt home study provider who works under the supervision of a Hague accredited adoption service provider - Nightlight Adoptions. The home study report which is dated the 18<sup>th</sup> of June 2018 specifies the personal and biological data of each petitioner, has made an assessment of their parenting suitability and of their past and current home environments. It includes financial evaluation and existing family status including interviews with the biological children of the applicants.

This Court is also aware that adoptions granted in Ugandan Courts are recognized and respected in their Country.

The home study report makes a positive overall recommendation.

In Section 46 (6) and (7) the Children Act it is stipulated that an inter country adoption should be considered as a last option in the adoption of a child. That before this alternative is considered a broad range of family centred alternatives should be considered.

The closest relatives of the child, including his birth mother, indicate in their affidavits in support, that they have no objection to this application and that they fully understand its implications. That then would also meet the requirement that the consent of the parents be given without promise of reward.

I have also considered that the petitioners are a family living in Uganda and that the first petitioner is working for gain in his NGO for which he is remunerated adequately and can properly meet the needs of his family. The child suffers a rare medical condition for which the applicants are providing proper management and he

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is clearly making steady improvement. He is also attending a special education program conducted by Kari Penrose Segner.

It would appear that in the circumstances this is the best option open to the child.

The petitioners have also obtained a Ugandan passport for the child.

### **Whether such order would be in the best interest of the infant. iii.**

The law requires the Court, when determining questions regarding the upbringing of a child, to consider that child's best interest or welfare as the primary determinant or paramount consideration. (See 1st Schedule of the Act).

The Court has considered the health, emotional, physical and material needs of the child and after carefully evaluating all the above, finds the best interest of JOSEPH BIYINZIKA is served by the grant of this application.

In the result it is ordered as follows:

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- a. An order is made for the adoption of JOSEPH BIYINZIKA by ROBERT JASON SEGNER and KARIN PENROSE SEGNER.
- b. A parental relationship, with all rights, duties, powers, responsibilities and authority, between JOSEPH BIYINZIKA on the one hand, and ROBERT JASON SEGNER and KARIN PENROSE SEGNER on the other, is hereby established.
- c. It is ordered that an entry be made in the Register of births and deaths reflecting a change in the parental relationship in respect to JOSEPH BIYINZIKA.

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- d. This order shall be served upon The Consular department of The Ministry of Foreign Affairs in Kampala.
- e. Costs of this Petition are provided for.

Dated at Jinja this...

day of October 2018

**MICHAEL ELUBU**

**JUDGE**

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