

UGANDA / JUDGMENT

In Re: JJuuko & Magezi(infants)
(Adoption Cause No 200 of 2014)
[2015] UGHCFD 205 (18 March 2015)
[2015] UGHCFD 205

COURT

HC: Family Division (Uganda)

BEFORE

Tuhaise, J

CASE / FILE NUMBER

Adoption Cause No 200 of 2014

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

ADOPTION CAUSE NO 200 OF 2014

IN THE MATTER OF THE CHILDREN ACT CAP 59

AND

IN THE MATTER OF JJUUKO NICHOLAS AND MAGEZI DENNIS

BEFORE LADY JUSTICE PERCY NIGHT TUHAISE

RULING

This is a petition for adoption of two minors, **JJuuko Nicholas** and **Magezi Dennis**, brought by **Stephen Caldwell** and **Sharron Annette Caldwell**. The petitioners seek orders that an order for the adoption of the children **JJuuko Nicholas** and **Magezi Dennis** by the petitioners be made under the Children Act with all the necessary directions; the costs of this petition be provided for by the petitioners; and for such further and other orders as the nature of the case may require.

The petition is supported by the affidavits of the petitioners **Stephen Caldwell** and **Sharron Annette Caldwell**, and also of **Nakanwagi Jane Rose** and **Zaina Nakubulwa**. In addition, this court interviewed on oath the two applicants, the two minors, the children's paternal grandmother **Nakanwagi Jane Rose**, and the Officer in Charge of Orphans and Vulnerable Children, Kampala City Council Authority (KCCA), **Zaina Nakubulwa**. Learned Counsel Isaac Mugume for the applicants filed written submissions.

The background is that the two male children, **Jjuuko Nicholas** and **Magezi Dennis**, who are siblings, are aged 15 and 11 years respectively. They were born to Kalanda Richard and Namukwaya Noeline, both deceased. The applicants are in actual custody of the children, having been earlier granted a Care Order by the Magistrates Court in Masaka on 21st July 2011, and a Guardianship Order by this Court on 8th October 2012. The application was addressed by this Court along the following issues:-

1. Whether the High Court is seized with the jurisdiction to entertain the matter.

Section 44(1)(b) of the Children Act 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.

2. Whether the petitioners qualify to be appointed the adoptive parents of the two children.

Section 45(1)(a) of the Children Act 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 three years; has fostered the child for at least thirty six months under the supervision of a 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.

In this case the adduced evidence shows that petitioners are citizens of New Zealand and are married to each other. **Stephen Caldwell** is aged 58 years. **Sharron Annette Caldwell**, his wife, is aged 51 years. This is adduced from their sworn affidavit evidence and the annexed copies of their respective passports. **Jjuuko Nicholas** is revealed by the copy of his birth certificate on the court record to have been born on 02/09/1999. He is currently aged 15 years and seven months. **Dennis Magezi** is revealed by the copy of his birth certificate on the court record, to have been born on 18/08/2003. He is currently aged 11 years and six months. This makes each of the applicants, who are aged 58 and 51 years to be above 25 years, and to be more than 21 years older than each the two children. Thus the applicants fall within the age requirements spelt out under section 45(1)(a) of the Children Act.

The applicants are citizens of New Zealand. This places them within the legal requirements of section 46 of the Children Act, being non citizens of Uganda. The applicants are teachers at Ambrosoli International School in Kampala, Uganda. The affidavit evidence on record shows that the applicants started residing with the two children in Uganda since 21st July 2011 vide a Care Order issued by the Magistrates Court Masaka on 21st July 2011, and later, a Guardianship Order by this Court on 8th October 2012. This means that though the applicants are not citizens of Uganda, they have stayed in Uganda for at least three years; and have fostered the two children for at least thirty six months under the supervision of a PSWO.

There is evidence that the applicants have been living with the children as a family. The two children themselves testified on oath before this court, after being found to be of understanding age, that they have been living happily with the applicants as a family. The certificates of good conduct by the National Central Bureau of Interpol Kampala, which are on the court record, show that the applicants do not have a criminal record. The Officer in Charge of Orphans and Vulnerable Children, Kampala City Council Authority (KCCA) **Zaina Nakubulwa**, in her report on record, her affidavit, and her affirmed oral testimony before court, has recommended the applicants as suitable persons to adopt the two children. The Family Report on the two applicants also recommends them as suitable adoptive parents. 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 both dead. However their paternal grandmother **Nakanwagi Jane Rose** who brought up the two children after their parents' death, and **Gerald Monday** their paternal uncle have signed consents to the adoption of the two children. **Nakanwagi Jane Rose** also testified on oath before this court where she reiterated her agreeing to the two children being adopted by the applicants. The petitioners therefore qualify to be appointed the adoptive parent of the two children.

***3. Whether the application is in the best interests of the two children*.**

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 two children **Jjuuko Nicholas** and **Magezi Dennis** are total orphans having lost both parents. The petitioners initially sponsored their education in addition to availing them basic necessities. Eventually they took actual custody of the two children, first through a Care Order, and later a Guardianship Order. The petitioners, in addition to their sworn affidavits, stated to this court on oath that they already treat the children as theirs. The applicants and the two children live as a family in their three bedroom house in Mutungo, Nakawa, together with the applicants' other children. They have been staying with the two children for the last four years. The applicants each stated that they were neither given nor did they give anything as consideration to adopt the two children.

The foregoing circumstances, in my opinion, are exceptional circumstances rendering the two children **Jjuuko Nicholas** and **Magezi Dennis** who are total orphans to be very vulnerable and in need of a home, care and love. The two children have lost both parents. Their paternal grandmother who brought them up has given them up to the applicants who have since offered them a home and love and care. The applicants are availing the children all necessities of life including education.

The Constitution of Uganda and the Children Act stipulate that a child has a right to have a home and be cared for. The applicants are able and willing to avail such home to the two children, having already fostered them for more than three years. The children's paternal grandmother and uncle have consented to the applicants' adoption of the two children. The two children themselves, after court had established them to be of understanding age, testified on oath before this court that they were not opposed to being adopted by the applicants with whom they were already living as a family under a guardianship order. In that respect I would agree that this application is in the best interests of the two children, and that the said children be adopted by the applicants who are already the children's guardians. The Family Report about the applicants indicates that their home country New Zealand is ready to respect the adoption order if granted.

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 two children, 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 two children **Jjuuko Nicholas** and **Magezi Dennis** by the petitioners **Stephen Caldwell** and **Sharron Annette Caldwell** be made.
2. The Registrar General of Births and Deaths shall make an entry recording this adoption in the Adopted Children Register.
3. The adoption order shall be furnished to the Consular Department in the Ministry of Foreign Affairs Kampala.
4. Costs of the petition shall be provided for by the petitioners.

Dated at Kampala this 18th day of March 2015

Percy Night Tuhaise

Judge.

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