

UGANDA / JUDGMENT

**In Re: Lisa Marie Cherline Sanyu,(child)
,(Adoption) (Family Cause No. 107 of
2018) [2019] UGHCFD 13 (26 March 2019)
[2019] UGHCFD 13**

COURT

HC: Family Division (Uganda)

BEFORE

Mukwaya, J

CASE / FILE NUMBER

Family Cause No. 107 of 2018

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

FAMILY CAUSE No. 107 OF 2018

IN THE MATTER OF LISA-MARIE CHERLINE SANYU (CHILD)

AND

IN THE MATTER OF A PETITION FOR ADOPTION BY ANITAH SUUBI HICKMAN

BEFORE: Hon. Lady Justice Olive Kazaarwe Mukwaya

RULING

The Petitioner

The petitioner Anitah Suubi Hickman (38) is a British citizen of Ugandan descent holding British passport number 525774182, it was attached and marked, 'Anitah's passport'. Ms. Hickman seeks to solely adopt her adopted niece, Lisa-Marie Cherline Sanyu, a child aged six years old. The petitioner got married to Trevor James Hickman (49) on the 2nd day of February 2002 in London Borough of Croydon- United Kingdom as per a copy attached and marked 'marriage certificate'. The petitioner, her husband and their biological children Luc Henri Hickman (16) and Leon Peter Hickman (13) reside at 277, Dunley Drive, New Addington Croydon, Surrey, CRO ORW, United Kingdom. Also attached is proof that the petitioner does not have a criminal record, which is marked, 'criminal clearance'.

While in Uganda, the petitioner resides at Muyenga 'A' Village Urban Council, Bukasa Ward, Makindye Division as per the letter authored by Mr. Olebat Fredrick, Chairperson LC1 Muyenga 'A' dated 4th March 2019. The petitioner is employed as a room manager at Co-operative Childcare New Addington day Nursery since November 2014 till present. Proof of her employment was attached and marked 'employment letter'. The petition is supported by the affidavit of the petitioner and the unequivocal consent of the petitioner's husband. Mr. Justin Bashabe and Ms. Mireille Edwards both of Croydon, United Kingdom, each wrote letters of recommendation on behalf of the petitioner and her husband in support of this petition for adoption of the child.

The Child

By way of background, the child, Lisa- Marie Cherline Sanyu was legally adopted on the 21st day of November 2016 vide Adoption Cause No. 259 of 2016 by Ms. Rosemary Nabatanzi, who is the biological sister of the petitioner. A copy of the adoption order is attached to the petition. Unfortunately, on the 21st day of April 2018, Ms. Rosemary Nabatanzi passed away as per the death certificate issued by the National Identification Regulatory Authority (NIRA) on the 9th July 2018. The original copy of the death certificate was submitted by the petitioner upon this court's direction.

The late Rosemary Nabatanzi found the child in 2012 at Nsambya Babies' Home and commenced the process of fostering the child which eventually led adoption. Having been granted the adoption order, the deceased processed her birth certificate indicating that she was born on the 15th of August 2012 which is attached to the petition.

The Probation and Social Welfare Officer of Makindye Division Urban Council, Ms. Angabire Patience prepared a report recommending the adoption of the child by the petitioner. Ms. Angabire gave an account of the background of the child before she was adopted by the late Rosemary Nabatanzi. She stated that on the 15th August 2012, the minor was found abandoned in the corridor of ABC Lodge located in Nakivubo Ward, of Central Division. A police case Vide SD REF: 13/15/08/2012 was recorded at Nakivubo Park Yard Police Post. The child was estimated to be three days old, at the time, because her umbilical cord had not yet broken off. The Police placed the child in Nsambya Babies Home for emergency care while steps were being taken to locate her biological parents or family. Efforts to trace the child's biological family proved futile and the child she was matched with the late Rosemary Nabatanzi who fostered her and later adopted her.

Ms Angabire further stated in her report that before her death, the late Rosemary Nabatanzi named the petitioner, Anitah Suubi Hickman as her child's primary care giver and the petitioner intends to keep the promise she made to her sister. She also observed that the relationship between the child and the petitioner is a very good and happy one and that it would be in the best interests of the child for court to grant this adoption order.

Ms. Namulindwa Mary in her affidavit stated that she has been the care giver to the child since the child was brought to Nsambya Babies Home to date. She added that in 2014, the late Rosemary Nabatanzi requested her to be her child's care giver when she travelled for work, a role she continued to play until April 2018 when the late Nabatanzi died. She added that the deceased had always referred to the petitioner as her sister and even before she died she left a message for the petitioner about taking care of her child which Ms. Namulindwa passed on to the petitioner.

This court had the opportunity of interacting with the child who was 6 years old. She told this court that her mother had 'gone to heaven'. The child further identified the petitioner as one of her mothers who takes good care of her.

It was the duty of this Court under the Children Act as amended to determine:

1. **Whether the petitioner is was a suitable adoptive parent?**
2. **Whether the grant of the adoption order was in the best interests of the child?**

Turning to the first issue, this is the second time the child before this court is being subjected to adoption proceedings. Two years after she was adopted the first time, her adoptive parent, Ms. Rosemary Nabatanzi died. The petitioner is the biological sister to the child's late adoptive parent. While the child's late adoptive parent was a Ugandan citizen, the petitioner before this court is a British citizen. The procedure for inter country adoption under S.46 of the Children Act as amended therefore applies in addition to the general section S.45(1) on prerequisites for adoption.

S. 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 25 years of age and is at least 21 years older than the child. S.46 of the Children Act as amended, 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 and has fostered the child for at least one year under the supervision of a probation and social welfare officer; does not have a criminal record; has a recommendation regarding his or her suitability to adopt a child from his or her country's probation and welfare office or other competent authority and has satisfied the court that his/ her country of origin will respect and recognise the adoption order.

The petitioner, Ms. Anitah Suubi Hickman is related to the child being her adoptive maternal aunt. She is 38 years old making her 32 years older than the child. She got to know the child when her late sister was in the process of the adopting her. She formally met the child for the first time in the summer of 2013 and later in the summer of 2015 when her late sister and the child visited her family in the United Kingdom. According to the petitioner, her husband, Mr. Trevor James Hickman and their children were excited to meet the child and have since loved and cared for her. Mrs. Anitah Hickman stated that she was in good health, had no criminal record in her home country or anywhere else in the world. She also attached recommendations concerning her suitability to adopt the child from friends to whom she and her husband are well known. The petitioner's husband, Mr. Trevor James Hickman, swore an affidavit which was attested before

Ms. Sonia Earleen Ashley, a notary public for England and Wales on the 18th October 2018, stating that he had no objection to the petition before this court.

The petitioner was not a stranger to the child, but her adoptive maternal aunt. This court was satisfied that the petitioner had provided sufficient evidence to indicate that she would make a suitable adoptive parent for the child.

1. Whether the application was in the best interest of the child Lisa Marie Cherline Sanyu?

The Children Act provides for the welfare principle guidelines which courts are enjoined to consider in making answering this question.

S.3(1) provides that ‘the welfare of the child shall be of paramount consideration whenever the states, a court, a tribunal, a local authority or any person determines any question in respect to the upbringing of a child, the administration of a child’s property, or the application of any income arising from that administration*.’

S.3(3) provides that ‘in determining any question under subsection (1), court or any other person shall have regard to:*

1. *the ascertainable wishes and feelings of the child concerned with due regard to his or her age and understanding*
2. *the child’s physical, emotional and educational needs;*
3. *the likely effects of any change in the child’s circumstances;*
4. *the child’s sex, age, background and any other circumstances relevant in the matter;*
5. *any harm that the child has suffered or is at risk of suffering; and*
6. *where relevant, the capacity of the child’s parents, guardian or any other person involved in the care of the child, and in meeting the needs of the child’*

This court was aware that the petitioner had not fostered the child for 12 months as is a requirement under S. 46(b) as amended. However, this court is mindful that the child knows the petitioner as her ‘other mummy’ besides her late adoptive parent who ‘went to heaven’. It was the dying wish of the child’s late adoptive parent that her sister, the petitioner, would take over the care of her daughter after she died. This court would like to honour that wish to ensure continuity of the child’s bond and identity with her adoptive parent’s family and to give her stability following the death of her adoptive mother.

It is against this background that this court shall waive the requirement for the 12 months fostering period. This court has no doubt that the granting of this petition will be in the best interests of the child Lisa Marie Cherline Sanyu.

Before I take leave of this matter, I should state that the home study report which was attached to the petition was not an independent report since it was prepared by the petitioner herself. This court therefore did not rely on it and instead considered the Probation and Social welfare report which was prepared by Ms. Angabire recommending this adoption. Court was willing to make this concession especially since the child is related to the petitioner as her adoptive niece and the petitioner is a British citizen of Ugandan descent.

I hereby make the following orders:

1. An order of Adoption of the Child Lisa Marie Cherline Sanyu by the petitioner, Anitah Suubi Hickman is allowed.
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.
4. Costs of the Petition to be provided for by the petitioner.

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Olive Kazaarwe Mukwaya

JUDGE

Dated at Kampala this 26th day of March 2019

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