

UGANDA / JUDGMENT

In Re: Malaika (Infant) (Adoption Cause No. 36 of 2018) [2018] UGHCFD 26 (5 July 2018) [2018] UGHCFD 26

COURT

HC: Family Division (Uganda)

BEFORE

Mukwaya, J

CASE / FILE NUMBER

Adoption Cause No. 36 of 2018

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

ADOPTION CAUSE No. 36 OF 2018

IN THE MATTER OF THE ADOPTION OF KYLE EVANS MALAIKA (AN INFANT) BY EDDIE
KOLISON TOKPA AND LISA MARGARET BAUGHMAN TOKPA

BEFORE: HON. LADY JUSTICE OLIVE KAZAARWE MUKWAYA

RULING

This is a petition for adoption of one infant, Kyle Evans Malaika, brought by Eddie Kolison Tokpa and Lisa Margaret Tokpa. The petitioners seek orders that an order for adoption of the infant by the petitioners be made under the Children Act with all the necessary directions; the costs be provided for by the petitioners; and any such further orders, as the nature of the case may require.

Eddie Kolison Tokpa and Lisa Margaret Baughman Tokpa swore affidavits in support of this application and so did James Ntege, the Senior Probation Officer, Mukono District.

The background to this application is that on the 2nd April 2016, the infant Kyle Evans Malaika was found abandoned at Kitemu Central, Nsangi sub county, Mukono District. He was three months old at the time. A police report, KEM 4a, was made to Nsangi Police under reference number SD REF 37/02/04/16. On 3rd April 2016, Kyle Evans Malaika was referred to Malaika Family Centre by the Police for his care and protection. A newspaper advert, KEM -5a, was run in the Bukedde Newspaper announcing the abandonment of baby Kyle and providing contact numbers to be reached in case anyone had any information on the infant. Similar

announcements were made on Radio Simba according to attachment KEM- 5b.

On the 26th of December 2015, Eddie and Lisa Tokpa made an application to foster a child and on the 26th of October 2016, baby Kyle was placed in their care. According to KEM-8, a court order from the Mukono Family and Children Court, dated 9th December 2016, arising from Care Application 168/2016, baby Kyle was committed to the care of the Tokpas.

It was the duty of this Court under S.44 (1) (b) of the Children Act to determine whether the petitioners were entitled to an order of adoption over baby Kyle as prayed in their application. This court in so doing had to answer two questions:

1. **Whether the petitioners qualified to be appointed the adoptive parents of baby Kyle?**
2. **Whether the application was in the best interest of baby Kyle?**

As to the first question, 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.

In the instant application, the petitioners are citizens of the United States of America. They are an interracial couple who have been married to each other since 2008. They attached copies of their passports, KEM-2a and KEM-2b; and marriage certificate KEM-1. Eddie Tokpa is 45 years old, while Lisa Tokpa is 40 years old. They are both 21 years older than baby Kyle who is under 3 years old.

The petitioners are residents of Bugujju LC 1, Nsube Parish, Mukono Central Division and their LC1 Chairman wrote a letter as proof of residence, KEM-3. Both petitioners are employed by the Council of Christian Colleges and Universities under the Uganda Studies Programme at the Uganda Christian University as Assistant Coordinator and Social Worker respectively. Ms Rachel Robinson, the Director confirmed in her letter to this Court; KEM-4, that the couple and she started working together in Uganda in 2012. This Court is satisfied that the petitioners have lived in Uganda for over 1 year.

As regards the one year fostering requirement under S.46(2) of the Children Act as amended; the petitioners in their affidavits stated that they had lived with baby Kyle since 26th October 2016 when he was committed to their care by letter from the Child's Foundation marked KEM-7. The Probation Officer who supervised the foster placement filed a report of his periodic home visits during that time and swore an affidavit to confirm his participation in the supervision of the petitioners after the child as placed in their care. The report was attached to his affidavit and

marked KEM-10. This Court is satisfied that the petitioners fulfilled the requirements of S. 46(2) of the Children Act.

The Uganda Police Force issued certificates of good conduct to both petitioners to indicate that neither of the two had any criminal record in Uganda, KEM-12. This Court is satisfied that S.46(c) of the Children Act as amended has been complied with.

Under S.46 (d), the petitioners were enjoined to show the Court that they were in possession of a recommendation from a competent authority showing their suitability as adoptive parents. KEM-10 is a detailed report chronicling the foster placement experience from the Probation Officers point of view. In the end he makes the recommendation that Eddie and Lisa would make suitable adoptive parents for baby Kyle. This recommendation is supported by letters from their Director, Rachel Robinson, who is a neighbour and has observed the three together on numerous occasions enough to conclude that the three have bonded. This Court is also in receipt of letters, one KEM-9a, from a nephew to Eddie Tokpa, one Joseph Lavela Saysay who lives in Monrovia, Liberia, and another from Lisa Tokpa's brother, Reverend Darren Baughman and his wife Dr. Rebekah Knight-Baughman, KEM-9b, stating that in their opinion, the petitioners were fully prepared for the adoption of baby Kyle. The Baughmans in particular had travelled to Uganda in June 2017 and had an opportunity to see the petitioners interact with baby Kyle and were excited to have him as part of their family. Lastly, Mr. Levi Ndimubanzi Ssemanza, the National Director of the Navigators Uganda also made a recommendation for the petitioners. In his letter, KEM-9c, he stated that he had watched the couple for a year and been impressed and touched as he observed Eddie and Lisa reorder their entire lives to offer the best parenting they can to their son including adjusting their work schedules and creating a beautiful room for the boy. In his opinion they were loving parents. This Court is satisfied that the petitioners have fulfilled S.46 (d) of the Children Act.

Counsel for the petitioners enjoined this Court to take judicial notice of the fact that the United States of America does recognize adoptions in Uganda. This Court agrees with Counsel, there is nothing to suggest that any adoption order made by Ugandan courts would not be honoured by the USA.

Turning to the second issue, whether this adoption was in the best interests of baby Kyle? S. 3 of the Children Act as amended provides for the welfare of the child and guiding principles.

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*

Baby Kyle was abandoned by his parents or guardians. Announcements aired in the print media and over the radio urging anyone who had information on him received no response. He was placed into the Malaika Centre where the Tokpas found him. He has been living with them ever since. He is their only child at the moment. The Probation Officer observed in his supervision report that the child made considerable progress under the care of the Tokpas. He was healthy, strong and happy; a far cry from the malnourished, sickly infant who was rescued almost two years ago. Baby Kyle's parents or guardians were not able to look after him. He has found a home with the Tokpas. The extended family are anxious to have Kyle join the family. This court is satisfied that a grant of an adoption order would be in the best interests of baby Kyle to ensure that all his physical, emotional and educational needs are met.

I accordingly order as follows;

1. An order of Adoption of the child Kyle Evans Malaika by the petitioners Eddie Kolison Tokpa and Lisa Baughman Tokpa is issued.
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 to be provided for by the petitioners.

Dated at Kampala this 5th day of July 2018

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Olive Kazaarwe Mukwaya

JUDGE

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Prepared on 11 October 2026 · Esheria