

UGANDA / JUDGMENT

In Re: Mumbere Pavin (Infant) (Adoption Cause No. 0001 of 2019) [2019] UGHCFD 4 (9 May 2019) [2019] UGHCFD 4

COURT

HC: Family Division (Uganda)

BEFORE

Musene, J

CASE / FILE NUMBER

Adoption Cause No. 0001 of 2019

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THE REPUBLIC OF UGANDA

IN THE MATTER OF THE HIGH COURT OF UGANDA AT FORT PORTAL

IN THE MATTER OF THE CHILDREN ACT, CAP. 59 AS AMENDED

ADOPTION CAUSE NO. 0001 OF 2019

AND

IN THE MATTER OF MUMBERE PAVINE (AN INFANT)

AND IN THE MATTER OF THE PETITION FOR ADOPTION BY ADRIANO ROSA VIEIRA AND
JODIE LYNN VIEIRA

BEFORE: HIS LORDSHIP HON. MR. WILSON MASALU MUSENE

Ruling

The petitioners, Adriano Rosa Vieira and Jodie Lynn Vieira represented by Counsel Isaac Mugume, filed this petition for adoption of a child Mumbere Pavine. The petition is for adoption brought under **Section 44 (b)** of the Children Act and seeks for the following orders;

1. Adriano Rosa Vieira and Jodie Lynn Vieira be appointed adoptive parents to Mumbere Pavine and the child be authorized to emigrate with them to the United State of America to fulfill their parental responsibilities.
2. The parental rights of having exclusive care, custody, control, parental responsibility for his maintenance, education, medical care, previously with the relatives be extinguished and vested in the adoptive parents.

3. The family name “Vieira” be added on to the child’s names.

Background of Petitioners

The Petitioner Adriano is a Brazilian Citizen with a permanent resident status in the United States of America by Green Card. Adriano Rosa Vieira is the holder of Brazilian Passport No. YCO9747. The Co-Petitioner is an American Citizen. Jodie Lynn Vieira is the holder of American Passport No. 49862209. The Petitioners have a residential address at 608 W 30th ST, RICHMOND, VA 23225 USA and are currently residing at Alirikos Guest house, Plot 1988, Omulen Close, Nsambya, Kampala. The Co-Petitioner has been residing in Uganda since the 16th day of May, 2018 while the petitioner has been in Uganda and back home several times. The Petitioners are married and together have two children, Melbee Kwagala Vieira and Ensi River Vieira.

Adriano is 46 years old and employed as a regular fulltime Research and Development Director at SUEZ in Virginia while Jodie is 43 years old employed as a small business owner. The Petitioners do not have any criminal record in Uganda or anywhere else and a home study was conducted by the Commonwealth Catholic Charities and recommended them as suitable adoptive parents for the child. Also, the Probation and Social Welfare Officers of Kabarole and Bunyangabu have supervised the Petitioners during the fostering of the child which started on the 10th day of January 2017 and are satisfied they will make good parents for the child.

Background of the Child

The child Mumbere Pavine was born on the 09th day of January 2015 to Matayo Mumbere (deceased) and Owemana Rasherri (deceased) formerly of Kibwa Village, Kateebwa Sub-County in Bunyangabu District. Matayo Mumbere passed on on the 24th day of May 2015 in his house and was buried at his friend’s place one Adonia in the Village of Kyamukobe. Subsequently, his partner returned to their house and stayed with the child Pavine but with difficulty because she was HIV positive and sickly and eventually died on the 18th day of December 2015. After burial a meeting was convened and it was agreed that Mr. Mukobi looks after the child Pavine and later in June 2016, Gideon Muhindo working with an Organisation called Pleders for Elderly People at Risk (PEPA) informed the child’s paternal uncle Bwambale Misaki that there was a possibility of identifying a family that could take care of Pavine’s needs.

PEPA subsequently conducted investigations on the background of the child and eventually a family from the USA was identified with the approval of the probation officer of Kabarole District. The family then started sending Pavine support and met him in October 2016 and expressed an interest in fostering the child with a view of adoption to which they applied for a care order from the Fort Portal High Court. They were appointed as the child’s foster parents on the 10th day of January 2017 and left him in the care of Mukobi Andrew until May 2018 when the Petitioners started fostering him.

Issues raised:

1. Whether the Petitioners are eligible to adopt the child?
2. Whether it is in the child's best interest to be adopted by the Petitioners?

Issue 1: Whether the Petitioners are eligible to adopt the child?

Counsel for the Petitioners submitted that the Petitioners are married, aged 46 and 43 years respectively while the child Pavine is 4 years making the age above 25 years for the petitioners and 21 years difference between the child and in compliance with **Section 45 (i) (a)** of the Children Act as amended. The petitioner has been residing in Uganda on and off since October 2016 and with the child for 3 weeks. The Co-petitioner has however been in Uganda since 16th May 2018 in compliance with **Section 46(a)** of the same Act.

He added that the Petitioners have fostered the child since the 10th day of January 2017 till today and they have at all times been supervised by the Probation Officers of Kabarole and Bunyangabu Districts. So they have fostered the child for over the mandatory 12 months as provided under **Section 14(b)** of the Children Act as amended. That the Probation Officers have recommended the Petitioners as suitable adoptive parents and they have no criminal record anywhere and have also been recommended as suitable adoptive parents from their home country. The Petitioners have also been given consent by the relatives of the child in writing as attached to the petition.

I have carefully considered the submissions of Counsel for the Petitioners and I do concur with his submissions that the Petitioners have met all the provisions of the law to wit; Part VII of the children Act Cap 59 as amended in 2016 provisions from **sections 44 to 48** in regard to whether they are eligible to adopt. I will not reproduce the same.

Counsel also submitted that he had informed the Petitioners about the effect of the adoption order. Our laws provide for an Adoption children Register under **Section 54** of the children Act as amended, where particulars of the adoptions under the Act are registered.

Section 51(b) of the same Act, provides that there shall vest in, and be exercised by, and enforceable against the adopter all such rights, duties, obligations and liabilities in relation to the future custody, maintenance and wedlock of the child, that is all the parental rights transfer to the adoptive parents.

The best interests of the child are with the Petitioner as submitted since the child has no biological parents and the relatives are not in position to look after him. The Petitioners have been taking care of the child since 2016 meaning that they are mindful of his best interest.

In the interest of justice, **Section 33** of the Judicature Act and **section 98** of the Civil Procedure Act gives the High Court inherent powers to make orders that may be necessary for the ends of Justice.

I accordingly find the Petitioners as suitable adoptive parents to the child Mumbere Pavine and in the best interest of the child the Petition is accordingly allowed with the following Orders:

1. Adriano Rosa Vieira and Jodie Lynn Vieira be appointed adoptive parents to Mumbere Pavine and the child be authorized to emigrate with them to the United State of America to fulfill their parental responsibilities.
2. The parental rights of having exclusive care, custody, control, parental responsibility for his maintenance, education, medical care, previously with the relatives be extinguished and vested in the adoptive parents.
3. The family name “Vieira” be added on to the child’s names.
4. This Adoption Order shall be furnished to the Consular Department in the Ministry of Foreign affairs and Permanent Secretary Ministry of Gender, Labour and Social Development.
5. Costs of this Petition shall be borne by the Petitioners.

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WILSON MASALU MUSENE

JUDGE

09/05/2019

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