

UGANDA / JUDGMENT

In Re: Musinguzi Davis Alias Elijah David Harper (Adoption Casue No. 0001 of 2018) [2018] UGHCFD 2 (22 March 2018)

[2018] UGHCFD 2

COURT

HC: Family Division (Uganda)

BEFORE

Stephen Mubiru, J

CASE / FILE NUMBER

Adoption Casue No. 0001 of 2018

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA SITTING AT ARUA

ADOPTION CASUE No. 0001 OF 2018

IN THE MATTER OF

1. SIDNEY STEPHEN HARPER }
2. WENDY ANNETTE HARPER } APPLICANTS

AND

MUSINGUZI DAVIS alias ELIJAH DAVID HARPER A CHILD

Before: Hon Justice Stephen Mubiru.

RULING

This is a petition by which the petitioners jointly seek an order of adoption in respect of a child, Musinguzi Davis alias Elijah David Harper, below the age of five years. The petitioners are husband and wife, having solemnized their marriage on 19th December, 1992 in the County of Hockley, Texas in the United States of America where they are ordinarily resident at 5909 Rio Grande Avenue, Midland, Texas and have lived together since then. Both applicants are citizens of the United States of America currently working as missionaries in Uganda with an organization known as Youth with a Mission (YWAM) within Arua District, with which they have been working since 15th March, 2015. They have for the last nine months, since 1st July, 2017, been ordinarily resident at premises rented from a one Royce Gloria Androa situate at plot 3/5 Michael Ondoga Close, Ewavio Cell, Mvara Parish, Arua Municipality (annexure "C" is the tenancy agreement for those premises).

The circumstances of the child, Musinguzi Davis alias Elijah David Harper are that the whereabouts of his parents are unknown. According to the investigative report of M/s Scorpion Investigations and Security dated 6th September, 2017 (annexure "H" to the petition) presented to court by Mr. Akiiki Mugisa Henry, a private investigator, the child was on 5th February, 2015 found abandoned at the age of approximately six months, at a lodge in the Katwe area in Kampala. He was handed over to Katwe Police Station and thereafter to the Probation and Welfare Officer of that area who then arranged for the child's hand over to a charitable organisation, Loving Hearts Babies Home of Africa Renewal Ministries, in Munyonyo, Kampala for temporary care. Efforts to trace the biological parents of the child having been unsuccessful, Loving Hearts Babies Home applied for and was on 24th April, 2015 granted a care order by the Makindye Family and Children's Court, under Care Order application Number 3 of 2015.

Upon the petitioners learning about the situation of this child from a one Lori Scott of M/s Little Miracles International Inc, they picked interest in providing foster care for him. Upon obtaining approval of the Probation and Social Welfare Officer of Arua as fit to provide foster care for the child, Loving Hearts Babies Home handed over custody of the child to them and they have since lived with and cared for the child at the residence situate at plot 3/5 Michael Ondoga Close, Ewavio Cell, Mvara Parish, Arua Municipality since then, to-date.

The petitioners have seven biological children, the oldest being aged 22 years while the youngest is aged 10 years. Their respective birth certificates are annexed to the petition and marked collectively as "E." They also have two children they adopted from Ukraine in August, 2004. The older one is 13 years old and the younger one 10 years old. Their respective birth certificates are annexed to the petition and marked collectively as "F." According to the report of Mr. Adriko George, the Probation and Social Welfare Officer of Arua dated 15th June, 2017, the petitioners have a passion for children and adoption, love working and living in Uganda, are willing and capable of providing this child as well, with a loving family environment (annexure "I" to the petition).

The petitioners have as well provided a detailed 20 page Inter-country Adoption Home Study Report dated 1st June, 2016 providing a wide ranging and in-depth analysis of their suitability as adoptive parents that was conducted by an adoption agency, M/s Little Miracles International, Inc (annexure "J1" to the petition), and presented to court by that organisation's representative in Uganda, Ms Natabatanzi Anna. The report comprises an evaluation of the petitioners'; - adoption goals, motivation to adopt, bio-data and background, number of contacts with the relevant social worker, adoption preparation and training undertaken, the marital relation, relation with their children, the health and psychological well-being of the family, results of the criminal background investigation, a description of their home environment, their religious views, interests and hobbies, financial situation, their views on adoption and parenting, views towards child rearing and discipline, and so on. All assessments having turned up favorable results, M/s Little Miracles International, Inc concludes the report by recommending the two petitioners as fit and proper persons to be the adoptive parents of up to two children of ages of 0 years up to 8 years of either gender. They are recommended as being capable of providing for and protecting

the best interests of any child they may choose to adopt.

Part VII of *The children Act* Cap 59 as amended in 2016 provides for the basic requirements for inter-country adoption. The petitioners in this case are aged 48 and 47 years respectively while the child is approximately three years old. Both of them are over 25 years older than the child. They fulfill the age requirement under section 45 (1) (a) of *The children Act*.

Under section 56 of the Act, a petitioner for adoption in inter-country adoption must; - have stayed in Uganda for at least 12 months, fostered the child for 12 months, must not have a criminal record, must have a recommendation concerning his or her suitability to adopt a child from their country's probation and welfare office or other competent authority and satisfy court that his or her country of origin will respect and recognize the adoption order.

The petitioners have been cleared by the Interpol Uganda, which issued each of them with a Certificate of good conduct on 29th September, 2017 (annexures "L" and "D" respectively). They have further averred in their affidavits in support of the petition that their country will respect the Adoption Order. Although they have lived in Uganda for nearly four years now, they have not fostered the child for the required minimum of one year. However, section 14 of *The children (Amendment) Act,* 9 of 2016 amended section 45 (4) by permitting court in exceptional circumstances to waive any of the specified requirements.

The child Musinguzi Davis alias Elijah David Harper was present in court during the hearing. There is need for stability of the child's life. In some situations, it is in the interest of the child to be adopted by his or her foster parents. In this case, the petitioners have already undertaken responsibility of caring for the child and from observation in court have established a parental bond with the child. In the submissions of their advocate, they plan to travel to the United States of America in the near future and it is important that they commence travel documents and a visa for the child. They have therefore presented exceptional circumstances to waive the statutory requirement of the minimum period of foster care.

The paramount consideration in making decisions concerning children is the welfare Principle. Having considered the submissions of Counsel for the petitioner as well as the pleadings and other documents in support of the petition and having seen and observed the petitioners and the child in court, this court is satisfied that all the statutory requirements set by *The Children Act* have been met by the petitioners. The court is satisfied that both petitioners are fit and proper persons to be appointed to adopt the child, Musinguzi Davis alias Elijah David Harper, given the fact that they have been living and supporting him, he is closely related to them, and they have sufficient means economic and otherwise, to provide for the child and the rest of their other children.

The court is further satisfied, on the evidence availed, that the Petitioner, granted the adoption order, will ensure the welfare and protection of rights of the child. Not to issue the order applied for will most likely result in placing the child into serious jeopardy as to his welfare. It is In the best interests of the child the petition is allowed. Accordingly, the petitioners Sidney Stephen Harper and Wendy Annette Harper are appointed the adoptive parents of the child Musinguzi

David alias Elijah David Harper and the relationship of parents is hereby established with all rights and privileges incident thereto. The Registrar General of Births and Deaths is hereby directed to make an entry recording the particulars of this adoption in the Adopted Children Register and to issue a Certificate to Sidney Stephen Harper and Wendy Annette Harper reflecting the parental relationship established. The Adoption order shall be registered with the office of Registrar General, Ministry of Justice and Constitutional Affairs, and with the Consular Department in the Ministry of Foreign Affairs of the Government of the Republic of Uganda.

Dated at Arua this 22nd day of March, 2018.

Stephen Mubiru,

Judge

22nd March, 2018.

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Prepared on 12 October 2026 · Esheria