

UGANDA / JUDGMENT

In Re NS (Adoption Cause No. 001 of 2019) [2019] UGHC 22 (23 July 2019)

[2019] UGHC 22**COURT**

High Court of Uganda

BEFORE

Murangira, J

CASE / FILE NUMBER

Adoption Cause No. 001 of 2019

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**THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT MUBENDE
ADOPTION CAUSE NO. 001 OF 2019. IN THE MATTER OF THE CHILDREN ACT, CAP,
59, AS AMENDED BY ACT NO. 16 OF 2016. IN THE MATTER OF NS AGED 2 YEARS
AND**

**IN THE MATTER OF A PETITION BY MRYTA BURPEE (FEMALE) FOR ADOPTION OF
NS (CHILD)**

RULING BY: HON. JUSTICE DR. JOSEPH MURANGIRA

1. Introduction.

1.1. Representation

The petitioner is represented by Ms Juliet Nagawa Luggya from Nagawa Luggya & Co. Advocates, Kampala.

1.2. This is an ex parte application.

2. The application/petition.

- 2.1. This petition is brought under Article 139 (1) of the Constitution of the Republic of Uganda, 1995, as amended, sections 14 and 15 of the Judicature Act, Cap. 13, Sections 3, 4, 13 and 14 of the Children (Amendment) Act, 2016 and Sections 45 and 46 of the Children Act, Cap. 59 and Rule 17 of the Children (Adoption of Children) Rules.
- 2.2. This petition is based on the following grounds; that:-

- 1) The petitioner is desirous of adopting the child, NS, a female child Ugandan, aged 22 (Twenty Two) months old under the provisions of the children's Act.
- 2) The petitioner is a Canadian Citizen aged 39 years, currently resident in Uganda, where she has been a resident since January, 2018.
- 3) The petitioner is a widow of the Late Jordon Burpee with whom she had applied and were granted an order of custody for the child.
- 4) That the petitioner and the husband have no biological children of their own, but have previously adopted a son DHB, aged 4 years, from South Africa.
- 5) The child, NS, has not been subject of an adoption order or of an application order, or an application or petition for an adoption order.
- 6) The petitioner has not received or agreed to receive and no person has given or agreed to make or give to the petitioner any payment or reward in consideration of the adoption of the child.
- 7) That the child, NS has been fostered by the petitioner since February, 2018 where she has been providing all her necessities of life up to date.
- 8) That on 9th March, 2018 a care order placing the child under the care of the petitioner was granted under the supervision of Mubende Probation and Social Welfare Officer, whose report is attached to the petition and marked "D".
- 2.3. This Petition is supported by an affidavit sworn by the petitioner on 30th January, 2019 at Kampala.

The petitioner's affidavit contains both oral and documentary evidence in support of this petition.

- 2.4. The petitioner prays for:-
- (a) That an order for adoption of the child, NS, by the petitioner be made under the children's Act as amended with all the necessary directions.
- (b) That the costs of this petition be provided for as above mentioned or otherwise as the court may direct; and
- (c) That such further or other order be made as the nature of the case may require.

3. Resolution of this petition by court.

- 3.1. In her written submissions, counsel for the petitioner framed the following issues for the court's determination:-
- 1. Whether the petitioner qualifies to be appointed adoptive parent of the child, NS.
- 2. Whether the application is in the best interest of the child.

3.2. This matter came up for hearing on 10th July, 2019. In attendance were the petitioner, the child, NS, the already adopted child DHB, aged 4 years, from South Africa, Mr. Byekwaso Fred, a police investigating officer who authored an investigation report in support of this matter, Ms Asimwe Mary who picked the child from the road side when she was about 3 (three) to 4 (four) days old, Luba Andrew also an investigating officer in this matter, the Probation & Welfare Officer, and of course counsel for the petitioner.

I interviewed and interacted with the abovestated persons in connection with this petition. Each of the aforestated persons are supporting the petitioner and the child who is to be adopted by the petitioner in this adoption proceedings.

3.3. Adoption proceedings.

Adoption is the creation of the parent child relationship by judicial order between two parties who are unrelated; the relation of parent and child created by law between persons who are not in fact parent and child. See Bryan A. Garner, Blacks Law Dictionary, (9th Edn A Thomson Renters' Business, 2009) 50.

Adoption in law creates a lifelong relationship of parenthood between a child and the adoptive. See the case of Ayat Joy –Vs- Jevevieve Chenekan Obonyo & Another High Court Adoption case no. 52 of 2002.

In this instant case, the child, NS, is an infant under the laws of Uganda. She is a person under the age of eighteen years. See Article 257 (1)(c) of the Constitution of the Republic of Uganda, 1995, as amended; and section 2 of the children Act, Cap. 59 as amended.

From the affidavit evidence and all the documents on the court record, the applicant is aged 39 years and the infant child is aged 2 years. Thus, the applicant is over 21 years older than the child. See section 45 (1) (a) of the children Act, (Supra). It is also important to note that both the applicant and the child are females. See section 45 (3) of the children Act, Cap. 59. See also the case of Re Edith Nassazi, High Court Adoption Cause no. 4 of 1997.

The child subject to these adoption proceedings has known parents. She was picked by a good Samaritan, Ms Asimwe Mary, by the road side when the child was about three to four days old. Certainly, the infant needs care and protection.

The applicant was granted a care order of custody of the infant by court. The applicant has been a defacto guardian of the infant since 2018. It is also noted that on 9th March, 2018, a care order placing the child under the care of the petitioner was granted under the supervision of Mubende Probation and Social Welfare Officer, whose report is on the court record. From the evidence on court record, there is no other person willing to provide for the special care and maintenance that child needs.

While in court, I observed that the applicant and the child have already bonded as parent and child relation exists. The financial welfare of the petitioner as investigated as per the documentary evidence on court record, and was found to be sound.

Further, section 45 (4) of the Children Act, Cap. 59, provides that the applicant must have fostered the child for a period of not less than thirty six months under the supervision of a Probation and Social Welfare Officer. In this instant case, the application/petition falls short of that legal requirement.

Courts have, however, been progressive in interpreting section 45 (4) of the Children Act. In *Re Derrick Mugoya Okola Willy, Edward Kabugo (Children) of Kamwokya, Kampala District*, High Court Adoption Cause no. 69 of 2007, where the applicant had not fostered the infants for thirty six months, the Judge held that Section 45 is only discretionary and not mandatory and the court waives the reminder of the thirty six months requirement if it is in the child's best interest. The special circumstances in this case is that the infant has no known parents and relatives and that the applicant is ready and willing to provide the infant with food, clothing, treatment, care, love, education, and so forth. Thus it is in the interest of the child that the thirty six months fostering period be waived. And it is accordingly waived.

4. Conclusion.

In closing and in total consideration of the entire petition and its supportive affidavit evidence, the submissions by counsel for the petition, the law cited hereinabove in this ruling and my entire analysis of the law and facts pertaining to this petition, I hold that this petition has merit. It is accordingly allowed in the following orders; that:-

- 1. The adoption order is granted to the petitioner, as prayed for in the petition.
- 2. All rights, duties, obligations and liabilities of the parents and guardians in relation to the welfare of the adopted child including but not limited to maintenance, treatment, care, love and education of NS.
- 3. All rights to appoint a guardian and to consent or give consent to marriage are extinguished and they vest in and will from now and onwards be exercised by and enforceable against the adopter.
- 4. The adoptive parent (petitioner) is at liberty to add their family name to the name of NS, the adopted child.
- 5. The petitioner shall bear the costs of this petition.

Dated at Mubende this 23rd day of July, 2019

..... DR. JOSEPH MURANGIRA JUDGE

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Prepared on 12 October 2026 · Esheria