

UGANDA / JUDGMENT

In Re: Ntabazi, Nakamate, Mirembe & Kirabo (Adoption Cause No. 81 of 2017) [2018] UGHCFD 225 (9 July 2018)

[2018] UGHCFD 225

COURT

HC: Family Division (Uganda)

BEFORE

Mukwaya, J

CASE / FILE NUMBER

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

ADOPTION CAUSE No. 81 OF 2017

IN THE MATTER OF THE ADOPTION OF GODFREY NTABAZI MUZEEYI TIMOTHY, NAKAMATTE JANE, PATRICIA MIREMBE AND PATIENCE KIRABO BY MARK EDWARD WILKINS AND CYNTHIA ELAINE WILKINS

BEFORE: HON. LADY JUSTICE OLIVE KAZAARWE MUKWAYA

RULING

This is a petition for the adoption of four children, two boys and two girls all under the age of 10 years old, jointly brought by Mark Edward Wilkins and Cynthia Elaine Wilkins a married couple as supported by a marriage certificate marked 'E'. The petitioners are citizens of the United States of America and they are 62 and 55 years old respectively. They have 6 biological children aged between 29 and 17 years old according to the Home Study Report made by Adoption Answers Inc. Marked 'B' and birth certificates of also marked 'B' in support of the 1st petitioner's affidavit. The Wilkins are resident in the United States of America at 4115 Brook Shadow Drive, Kingwood, Texas 77345, where they live with their two youngest children, one teenage daughter and one adult son. Upon the Wilkins expressing their interest in adopting, the four children, subject of this petition were placed under their care on the 12th of September 2016.

Mr. Joseph Serwadda Roberts, Director of Agape Children Ministries, a home mandated to provide care for needy children, registered as an NGO in Uganda under registration number 11066, swore an affidavit as to the background of the first two children; Godfrey Ntabazi Muzeeeyi Timothy and Nakamatte Jane. On the 3rd day of August 2015 at age 21/2, Godfrey was admitted

into the home. His sister Jane was admitted sometime later after February 2016. The two children were the result of a relationship between their mother Harriet Nazziwa, who was a school girl and their father, Fred Byebakye who was bicycle transporter in Mubende Town. Harriet dropped out of secondary school to live with Fred when she was expelled after the school authorities discovered her pregnancy. Her parents, Senyonga Vincent and Nakalyowa Florence tried to discourage the relationship in vain. Subsequently, Harriet took ill and died from her illness on the 19th of September 2012. The short birth certificate in respect to Godfrey tendered by the petitioners, names one Nakito Mary as his mother and Byekabye Fred as his father; the certificate, marked 'O', does not mention the name Harriet Nazziwa. It was issued by the office of the Kitenga Sub County on the 27th of May 2016 under registration number K33/783. This information was repeated on Godfrey's child case record at the Agape Children home.

Be that as it may, there was evidence from the paternal and maternal grandparents who swore affidavits in support of the petition. They stated that they met their grandchildren at Harriet's burial in Mubende. After the burial, the children's father, Fred Byebakye, left Jane with their paternal grandparents; Ntabazi Kopuliam and Nabuufu Kevina while he left for Kampala with the boy Godfrey where he begun to cohabit with another woman. Godfrey was abused by his 'step mother'; beaten, mistreated and neglected. His father was an alcoholic and was not able to prevent the abuse. Neighbours got concerned reported the case of domestic violence against the boy to police at Kitebi. His father and Godfrey's 'step mother' were arrested and detained at the same police station. On the 3rd August 2015, following these events, Godfrey was taken to the Agape Children home.

Jane stayed with her paternal grandparents but she was a sickly child and it was difficult to look after her. Her Aunt, Namugenyi Joyce, informed Agape House about her plight and requested that Jane also be taken in by the home. Medical tests revealed that Jane was HIV positive. Incidentally, no medical reports were attached to the application to support these attestations of abuse and illness. The closest to a medical report was a child progress form in respect to Godfrey Ntabazi Muzeeyi stating that he had received a series of immunisations for polio, BCG, hepatitis etc.. Fred Byekabye died on 17th February 2016 after falling ill, leaving the children orphans. A death certificate issued by the Mubende District Local Government was attached to the affidavit sworn by Ntabazi Kopuliam, his father and marked 'C'.

The girls, Patricia Mirembe and Patience Kirabo are daughters to a young woman called Nakalanzi Victo. She swore an affidavit in support of this petition. In that affidavit, she states that was told by her older step sister that was born into a polygamous family of 25 siblings. Her parents separated when she was just a baby and her mother left her at her father's home. Her father in turn took her to her grandmother who raised her but died when Nakalanzi was 9 years old. When she was about 14 years old, Nakalanzi left home to live with her friends in Kitebi. This is how she met her daughters' fathers; a truck driver whose names she could not remember and one Wasswa, a boda boda rider, who abandoned her when he learnt of the pregnancy.

When Nakalanzi appeared in Court she was visibly expecting another child and she added that she had a 2 year old daughter at her mother's house. She was only 22 years old. Nakalanzi admitted that she was incapable of looking after her girls Patricia and Patience. This is why she abandoned them at the old woman's home when she could not manage and only checked on them about three months later only to find that the girls had been moved to a Children's home. Her actions earned her detention for one week on charges of child neglect. Upon her release, Nakalanzi visited the girls at the home and requested the Home to keep her children, she eventually relinquished her parental rights over the girls after this, since she was unable to provide for them and she had no objection to anyone willing fulfil that role since even their fathers were not in the picture at all. She identified the Wilkins, in Court, as the couple to whom she had been introduced as interested in adopting her girls. This Court was furnished with an advert calling on the fathers of the girls to contact the number given, it was run in the Bukedde Newspaper, a Luganda daily, on the 7th of June 2018, almost one year after this petition was lodged before this Court. The advert was attached to the affidavit of one Tusiime Yvonne a legal assistant with Mugume and Co. Advocates, Counsel for the petitioners. It was marked 'B'.

Written consents to the adoption were received from Nakalanzi Victo, mother to Patricia and Patience, Ntabazi Kopuliam, Paternal grandfather to Godfrey and Jane, Senyonga Vincent, Maternal grandfather to Godfrey and Jane. All of these appeared in court and confirmed that they had no objection to the adoption.

A home study was carried out by the Adoption Answers Inc., based in the United States of America, on the suitability of the Wilkins as adoptive parents and they were approved to adopt up to 4 children from Uganda on the 9th of February 2016. According to the report, the Wilkins' biological children are aware of the intended adoption by their parents of children from Uganda and were looking forward to meeting the children. Their son, Caleb Andrew Wilkins had some concerns about the sufficiency of the home budget to meet the needs of the new children on top of their own but was happy to make adjustments as necessary to accommodate the new members of the family. All the biological children agreed that their parents were loving and good parents to them. These opinions were contained in the home study report and there were no individual statements made by the biological children or any friends or family of the Wilkins outside what was reported in the Home Study Report.

On the issue of the absence of a criminal record, the Federal Bureau of Investigations in the USA as well as Interpol Uganda issued reports to indicate that both petitioners had no criminal record.

Ms. Immaculate Nabawanuka, the Probation and Social Welfare Officer Lubaga Division Urban Council, considered the social background of the children and concluded that this was a genuine case where adoption is the best alternative care purely needed and intended for the general well being of the children. It was her finding that the petitioners had complied with the conditions under the Children Act, Cap 59.

It was the duty of this court to establish the following;

1. **Whether the petitioners were suitable adoptive parents?**
2. **Whether the adoption was in the best interests of the children; Godfrey Ntabazi Muzeeyi Timothy, Nakamatte Jane, Patricia Mirembe and Patience Kirabo?**

Part VII of the Children Act Cap 59 as amended in 2016 provides for the restrictions and conditions for adoption; including age of the applicants, spousal consent in case of joint applications and restrictions on gender of the child for sole applicants. The requirements for inter-country adoption are provided for under S.46 which states as follows;

“(1) A person who is not a citizen of Uganda may in exceptional circumstances adopt a Ugandan child, if he or she-*

1. *has stayed in Uganda for at least one year;*
2. *has fostered the child for at least one year under the supervision of a probation and social welfare officer;*
3. *does not have a criminal record;*
4. *has a recommendation concerning his or her suitability to adopt a child from his or her country’s probation and welfare office or other competent authority; and*
5. *has satisfied the court that his or her country of origin will respect and recognise the adoption order.*

S.47 of the same Act provides that the consent of the parents of the child, if known, is necessary for the adoption.

It is the finding of this Court that the petitioners have complied with all the requirements of S.46 save for S.46 (a) and (b). As regards S.46 (a), whether the petitioners have stayed in Uganda for over 1 year, by their own admission they have not. Since the children were handed over to them to foster on the 12th of September 2016, they have visited them for purposes of bonding, twice in 2017 and once in 2018. In the meantime they did hand over their Power of Attorney to Mr. Joseph Serwadda Roberts, the Director of Agape Children’s home to foster the children on their behalf. The children have therefore remained institutionalised for the last three years give or take a few weeks, all this while the petitioners have shown their love and affection for the children by sending financial and material support to meet their needs.

The Wilkins stated that their busy work schedules did not make it possible for them to stay in the country for 1 year. This Court had the opportunity to see the Wilkins with the four children. This Court was not convinced that a bond had formed between the Wilkins and the children. These were four children of different ages and different social backgrounds. The Wilkins intended to add all four to their already existing family. It was important that Wilkins take the time to foster the children to determine how they would work as a family. The Home Study report recommended that the Wilkins could foster up to 4 children. They were 62 and 55 years old respectively and Mark Wilkins was diagnosed with hypertension. The children on the other hand

were aged, 7, 6, 6 and 4 years old. This was a very active stage in the children's lives where they needed a lot of attention. Jane needed even more care and attention because of her illness. Mrs. Wilkins stated that she would be a full time stay at home mother and therefore the primary care giver for the children. This would have been ideal if this Court was convinced that a bond had been established between the children and the Wilkins, which it was not. The absence of a detailed report on the supervision during the interim visits from the Lubaga Probation and Welfare Office adds to this Court's dissatisfaction with the petitioners' compliance with the legal requirements under S.46 (a) and (b).

Further, while this Court was in receipt of a written consent from the maternal grandparent of Godfrey and Jane, it was also in receipt of a short birth certificate in respect to Godfrey which does not name Harriet Nazziwa as his mother, instead it names one Mary Nakityo. This was a glaring anomaly which was not resolved by any of the other accompanying documents on file. If Godfrey and Jane were pure siblings sharing both parents, they should have the same mother. Who was this Mary Nakityo??? This question was left unanswered especially since no birth certificate was availed for Jane Nakamate.

This Court also observed that the Lubaga Probation Officer Report dated 7th June 2018 referred to a 'Byenkya' Fred as being the deceased father to Jane and Godfrey and yet all documents name their deceased father as 'Byebakye'. The error here, in the opinion of the Court goes beyond a common mistake. The error changes the identity of the children's father. It was a mistake that the petitioners should not have made. The ultimate intention of foreigners adopting children from this country is to take them to their home country and raise them there. It is imperative that names, dates, ages are kept consistent and accurate to avoid suspicion of ill intention against the children on the part of the petitioners or anyone else.

There was the matter of the belated advert relating to the absentee fathers of Patience and Patricia. The advert run almost one year after this adoption petition was filed before this Court on the 7th of June 2018. This court was not surprised that no viable responses were received. Overall, there was a general laxity to the way this petition was presented to the Court, with all due respect to Counsel for the Petitioners.

Finally, it was clear that the mother of the girls, Patience and Patricia was a vulnerable person herself. This Court did not detect any attempts by the Probation and Social Welfare Officer to provide a solution. It appeared that all that was necessary was her consent to the adoption, which she gave. This Court is of the opinion that in future petitions, teenage mothers like Nakalanzi Victo be provided with Counsel independent of the petitioners advocates to guide them through the process of adoption and provide other psycho social support to achieve a holistic result in the end.

In this Court's opinion, the petitioners appeared to be a well-meaning couple. Mrs. Cynthia Wilkins was an adopted child herself and therefore she has a passion for seeing these children placed in a loving and caring home, a home she and her husband could provide. However, it was the duty of this court to evaluate the evidence in support of the petition and make its decision. This petition was brought in haste and care was not taken in presenting it to the Court leaving loopholes for negative conjecture.

For the reasons foregoing, I decline to grant an adoption order. This Court advises the Petitioners, who are still the foster parents of the children to take note of Court's findings and make decisions in the best interests of the four children for their future.

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Olive Kazaarwe Mukwaya

JUDGE

9/7/2018

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