

UGANDA / JUDGMENT

In Re: Rwotomiya & Amari (Infants) (Miscellaneous Civil Application No. 0011 of 2017) [2018] UGHCFD 7 (2 October 2018)

[2018] UGHCFD 7

COURT

HC: Family Division (Uganda)

BEFORE

Stephen Mubiru, J

CASE / FILE NUMBER

Miscellaneous Civil Application No. 0011 of 2017

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA SITTING AT GULU

MISCELLANEOUS CIVIL APPLICATION No. 0011 OF 2017

IN THE MATTER OF AN APPLICATION FOR CHANGE OF NAME OF ADOPTED CHILDREN

BY

1. KENT ALLAN NOLLEY }
2. REBECCA JOY NOLLEY } APPLICANTS

IN RESPECT OF

1. RWOTOMIYA RAYMOND } CHILDREN
2. AMARI GRACE }

Before: Hon Justice Stephen Mubiru.

RULING

This is an application by which the applicants jointly seek an order allowing them to change the name of their two adopted children; Rwotomiya Raymond and Amari Grace by adding onto their names, the name "Nolley," being the applicants' family name. The application is made under section 36 of *The Judicature Act*, section 98 of *The Civil Procedure Act* and Order 52 of *The Civil Procedure Rules*. The applicants were by an adoption order of this court dated 26th March, 2016 in Adoption cause No. 0014 of 2017, appointed the adoptive parents of the two children, aged nine years and two months respectively. The main ground for seeking a change of name for the two infants is that this will create a stronger bond with their adoptive parents and the rest of the

children in the family as now they all have become accustomed to being called by the family name "Nolley."

Submitting on their behalf, Mr. Mr. Ochieng Yafesi argued that is in their interest of both children not to feel discriminated, that the application should be allowed. They need to add the name Nolley to identify with the family. The applicants had assumed that they could add the name following the adoption order but they have since learnt that they need a court order if they are to change the register of births, the NIRA records and the travel documents, hence this application.

By applying for a change of name, the applicants are agreeing to; add a family name and thus implicitly abandon any former family names the children may have had; use their new family name at all times; and have people address them with their new family name. Being minors and the applicants their adoptive parents, the applicants are deemed to agree to this proposed change of name on behalf of their adopted children.

Ordinarily, for a change of name to be fully legally recognised, the person having parental responsibility for the child can execute a Deed Poll, which is a legal document containing personal information about the child, which will later be advertised in the Gazette. The Deed Poll must be accompanied by the child's birth certificate and a statutory declaration sworn by a third party to formally identify the child and state the length of time for which that person has known the child and his or her parents. The Deed Poll must be supported by a Statutory Declaration, a solemn promise that the proposed change of name will be for the benefit of the child.

However in the case of an adopted child, the better practice is by application to Court. The Registrar of births and Deaths, The National Identification and Registration Authority (NIRA) as well as the Department of Immigration, ought not to accept a deed poll document as evidence of a child's change of name. A court order is required for this. The proposed name change must be approved by court, and approval will not be given in every circumstance. ***The Children Act* requires the "welfare principles" to be the guiding principles in making any decision based on the Act. According to Item 1 of The First Schedule of that Act, whenever any person determines any question with respect to the upbringing of a child, the child's welfare shall be of the paramount consideration.** The name change should be in the best interests of the child. Assigning a name to a child is part of the child's upbringing.

In determining whether or not to grant an order authorising a change of name of a child, the court will consider a variety of factors:- the length of time that the child has used the current name, the effect a name change will have on preserving the child's relationship with both parents, the child's relationship with each parent, the child's need to identify with a new family unit through the use of a common name, the wishes of the child (if old enough to express such wishes), and any other relevant factor. A court is likely to approve an application to change a child's name when both parents petition together. An application to change a child's surname is normally only successful when everyone having parental responsibility for the child, gives their consent.

I find in this case that it is in the best interests of both children and that the proposed change of name is responsive to both children's need to identify with their new family unit through the use of a common family name, Nolley, and also for strengthening and preserving the children's relationship with both adoptive parents. A child's right to know and be cared for by his or her parents or those entitled by law to bring him or her up guaranteed by article 34 (1) of *The Constitution of the Republic of Uganda*, *1995* includes the child's need to identify with a new family unit through the use of a common name. Since both adoptive parents have given their consent to the proposed new names and have filed the application jointly, the application is allowed.

Consequently, the child Rwotomiya Raymond is henceforth to be known as RWOTOMIYA RAYMOND NOLLEY, while the child Amari Grace is henceforth to be known as AMARI GRACE NOLLEY. Reasons wherefore, The National Identification and Registration Authority (NIRA) is hereby directed to cause the change of name of the two infants in its particulars of registration relating to the two infants. Similarly, the Registrar of Births and Deaths is directed to issue to the adoptive parents of the two infants, birth certificates reflecting the new names of the two infants. The applicants are to meet the costs of this application.

Dated at Gulu this 2nd day of October, 2018.

Stephen Mubiru,

Judge

2nd October, 2018.

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