

UGANDA / JUDGMENT

In Re: the Adoption of Miracle Jack (Adoption Cause No. 73 of 2018) [2018] UGHCFD 223 (25 September 2018) [2018] UGHCFD 223

COURT

HC: Family Division (Uganda)

BEFORE

Mukwaya, J

CASE / FILE NUMBER

Adoption Cause No. 73 of 2018

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

ADOPTION CAUSE No. 73 OF 2018

IN THE MATTER OF THE ADOPTION OF MIRACLE JACK BY TIMOTHY JOSEPH MANSON AND
HELEN ELIZABETH MANSON

BEFORE: HON. LADY JUSTICE OLIVE KAZAARWE MUKWAYA

RULING

The Petitioners

The petitioners, Timothy Joseph Manson (36) and Hellen Elizabeth Manson (33) are citizens of New Zealand and holders of passports No. LL833145 and No. LK667466 respectively from the same. They are a married couple who were married on the 15th April 2007 by New Hope Community Church, Auckland in New Zealand and have one biological child, Eva Brave Nzuri Manson, 2 years old and one adopted daughter Hope Selah Kyomuhendo aged 4 years old. The petitioners who are originally from New Zealand have been resident in Uganda since January 2014. Their current place of abode is Pepsi Cola zone L. C 1 Kasanga, Muyenga parish, Makindye Division Kampala District. While the 2nd petitioner is a stay at home mother, the 1st petitioner is the Country Director of Tutapona Trauma Counselling, a Non-Governmental Organisation located in Kampala at Clock Tower Post Office, P. O Box 32366, a position he has been holding since 2016. Copies of the petitioners passports, marriage certificate, children's birth certificates, degree certificates, proof of employment are attached and marked 'A', 'B', 'C', 'D', 'E', 'F', 'G' and 'D'. The petitioners are jointly seeking to adopt the child, Jaloc David, a male minor aged approximately 15 months old.

The Minor

Jaloc David was born on 5th June 2017 at TMR International, Kampala District. His birth certificate was attached and marked 'E'. David's biological mother and biological father are siblings named Giramiaparwoth Patience and Okwayrwoth Patrick. David was conceived after his father Patrick had an incestuous encounter with his sister Patience who was only 12 years old at the time. Attached is a police referral form from the Child and Family Protection Department Kira Road to Wakisa Ministries dated 9th December 2016 for the protection and care of a 13 year old girl, Patience Girama, who was three months pregnant at the time and that her parents were unable to stay with her when she was in that situation.

Wakisa Ministries took Patience into their care with the consent of her parents until the baby David was born. He was handed over to the petitioners after he was born. Owing to the circumstances of his birth, his mother who was a minor and the fact that he was a product of incest, his biological family were not able to keep him.

The Parents of the Minor

David's father is not a part of these proceedings. He is a suspect of defilement and is no longer living with his family. David's mother, Patience was interviewed by this court. She stated that she has only seen her baby, Jaloc David, once since she gave birth to him over a year ago, because he has been in the care of the petitioners. Her reason for coming to court was to hand over her son to them. Patience had resumed her studies and was a student in Grade 4 at TNC academy in Kampala. She added that in future, when she was older she would be interested in seeing her son but she had no objection to the petitioners adopting him. This statement was in addition to her unequivocal consent to the adoption which she made in writing.

Patience's biological mother Atim Nirwoth Grace and father Nenibangrwoth Charles also gave their unequivocal consent to the adoption of David by the petitioners. They both stated on oath that they had no objection to the adoption since they were not in a position to raise him.

It was the duty of this Court under S.48 of the Children Act as amended to determine whether the petitioners were entitled to an order of adoption over baby David Jaloc as prayed in their petition. This court in so doing had to answer two questions:

1. **Whether the petitioners qualified to be appointed the adoptive parents of Jaloc David?**
2. **Whether the application was in the best interest of Jaloc David?**

As to the first question, S. 45(1) (a) of the Children Act provides that an adoption order may be granted to a sole applicant or jointly to spouses where the applicant or at least one of the applicants has attained 25 years of age and is at least 21 years older than the child. S.46 of the Children Act as amended, provides that a person who is not a citizen of Uganda may, in exceptional circumstances, adopt a Ugandan child if he/she has stayed in Uganda for at least one year and has fostered the child for at least one year under the supervision of a probation and social welfare officer; does not have a criminal record; has a recommendation regarding his or

her suitability to adopt a child from his or her country's probation and welfare office or other competent authority and has satisfied the court that his/ her country of origin will respect and recognise the adoption order.

Richard and Anna Welch are American citizens aged 33 and 31 years old making them 32 and 30 years older than Jaloc David. The child has been in their care by a foster care placement undertaking dated 5th June 2017. This placement was under the supervision of a probation and social welfare officer called Ms. Cheptoris Hilda. A Care Order dated the 30th of October 2017 was made by the Magistrate's Court at Nakawa committing the child into their care and protection. On the 19th of June 2018, after the child had spent a year in the care of the petitioners, Ms. Cheptoris made a report recommending that the petitioners adopt the child. The report is attached and marked 'L'. In brief, the report highlights the background of the child and the circumstances surrounding his birth, points out that the child is healthy, that the petitioners had duly completed all the conditions required under the Children Act and she therefore believed that adoption was the best alternative care for the child.

In July 2018, a Home Study Report, marked 'M', was completed by Ms. Deborah Driessen-Grika to ascertain the suitability of the petitioners for inter country adoption. It included background and records checks, review of documents and family circumstances, character references, and other aspects of the investigation required to prepare the home study. After this investigation, Ms. Driessen- Grika recommended the petitioners for the adoption of one child between the ages of new-born to 2 years old. Court is of the firm view that this inter-country home study fulfils the international adoption requirements which are recognised by the United States of America.

In addition to these investigations, the petitioners attached certificates of good conduct from the Uganda Police Force dated 21st May 2018, indicating that they both had no criminal record in Uganda. These two certificates were marked 'N'. They also attached general physical exam reports, for prospective adoptive parents which showed that both were in good health. The reports were marked 'H'.

To further prepare for the adoption of Jaloc David, the petitioners, between the 21st and 29th April 2018, completed six 2 -hour online courses conducted by the Adoption Training Online on the following topics; 'Bonding and Attachment Issues in Internationally Adopted Children'; 'Multicultural and Transracial Adoption'; Medical Risks for Internationally Adopted Children; 'Separation, Loss and Grief'; 'Openness in Adoption' and 'How does it Feel, Your Child and Emotions'. The petitioners presented certificates of completion for the courses which were attached and marked, 'I'.

This is the most comprehensive and well prepared application for adoption this court has ever seen. The petitioners ensured that they complied with all provisions of the law, and went a step further to demonstrate their need to understand inter-country adoption by taking courses. When this court observed their family at the hearing of the petition, the bond between the family and the baby Jaloc David was evident. It was clear to see that the baby knew no other family and that the petitioners had been as intentional as they could to facilitate the bonding between their

biological children and baby Jaloc David during the time they had him in their care as foster parents.

It is this Court's finding that the petitioners have provided overwhelming evidence of their suitability as adoptive parents.

1. Whether the application was in the best interest of Jaloc David?

The Children Act provides for the welfare principle guidelines which courts are enjoined to consider in making answering this question.

S.3(1) provides that 'the welfare of the child shall be of paramount consideration whenever the states, a court, a tribunal, a local authority or any person determines any question in respect to the upbringing of a child, the administration of a child's property, or the application of any income arising from that administration*.'

S.3(3) provides that 'in determining any question under subsection (1), court or any other person shall have regard to:*

1. *the ascertainable wishes and feelings of the child concerned with due regard to his or her age and understanding*
2. *the child's physical, emotional and educational needs;*
3. *the likely effects of any change in the child's circumstances;*
4. *the child's sex, age, background and any other circumstances relevant in the matter;*
5. *any harm that the child has suffered or is at risk of suffering; and*
6. *where relevant, the capacity of the child's parents, guardian or any other person involved in the care of the child, and in meeting the needs of the child*'

Jaloc David's mother Patience, a minor, and his grandparents, Charles and Atim unequivocally relinquished parental responsibility to the petitioners upon his birth. The circumstances of his birth were unfortunate and his biological relations wanted to put the matter behind them.

The petitioners were missionaries and had opened their home to Jaloc David, not merely as a sign of Christian responsibility but because they genuinely loved the boy without reservation. To add to this, they have undertaken extensive practical steps to prepare themselves for the intricacies of adoption. Jaloc David presently has some medical challenges including poor weight gain making him smaller than his age but this has not compromised the petitioners' commitment to have him as their son. They have demonstrated their long term good intentions for the child by their care, protection and love over the last year and few months. This court has no doubt that the granting of this application will be in the best interests of Jaloc David.

I hereby make the following orders:

1. An order of Adoption of the Child Jaloc David by the petitioners, Richard Elliot Welch and Anna Welch is allowed.
2. Petitioners are allowed to change the child's name from Jaloc David to David Jaloc Welch.
3. The Registrar General of births and deaths shall make an entry recording this adoption in the Adopted Children Register.
4. The Adoption Order shall be furnished to the Consular Department in the Ministry of Foreign Affairs.
5. Costs of the Petition to be provided for by the petitioners.

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Olive Kazaarwe Mukwaya

JUDGE

Dated at Kampala this 25th day of September 2018

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