

UGANDA / JUDGMENT

In Re: Tusabiri (an infant)
(Adoption Cause No 252 of 2013)
[2014] UGHCFD 30 (8 May 2014)
[2014] UGHCFD 30

COURT

HC: Family Division (Uganda)

BEFORE

Tuhaise, J

CASE / FILE NUMBER

Adoption Cause No 252 of 2013

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

ADOPTION CAUSE NO 252 OF 2013

IN THE MATTER OF THE CHILDREN ACT CAP 59

AND

IN THE MATTER OF TUSABIRI SUZANNAH MYRTHE (AN INFANT)

THE PETITION OF NAUTA RENY RINSKJE (FOSTER PARENT OF THE INFANT)

BEFORE LADY JUSTICE PERCY NIGHT TUHAISE

RULING

This is a petition for adoption of **Suzannah Myrthe Tusabiri**, a child, brought by **Nauta Reny Rinskje** under Article 139(1) and 34(1) of the Constitution of the Republic of Uganda, sections 3, 4, 5, 44, 45, 46 and the 1st schedule of the Children Act cap 59. The petitioner seeks orders that:-

1. An order for the adoption and custody of the said **Tusabiri Suzannah Myrthe** by your petitioner be made under the Children Act cap 59 with all necessary directions.
2. Such further or other orders as nature of the case may require.

The petition is supported by the affidavit of the petitioner **Nauta Reny Rinskje**. At court's request, the affidavit of Ssekiranda Manisulu, the carpenter who found the child was also filed. In addition, this court interviewed the applicant and James Ntege, the Probation and Social Welfare Officer (PSWO) Mukono district, on oath.

Learned Counsel Talemwa Collin for the applicant filed written submissions along three issues. In his submissions he added a prayer not included in the petition, that is, that the petitioner be allowed to immigrate with the child to the Netherlands when her contract expires.

The background is that the child was abandoned in a carpentry workshop where she was found by a carpenter on the morning of 21/02/2006. The carpenter took the child to the local council authorities who referred her to Kireka police station. A case of abandonment was opened by the police as SD/REF 052/2006. After failing to locate the mother, the police contacted Noah's Ark Children Ministry which started caring for her and eventually obtained care order number 0102/2006 for that purpose. The petitioner met the child in 2008 when she came to work as a volunteer at Noah's Ark Children Ministry. She picked interest in the child and accorded her special care though she was still under the care of Noah's Ark Children Ministry. She eventually received the child in her custody in 2009 and procured a foster certificate in 2010. She has since been living with the child who has a speech impairment.

1. Whether the High Court is seized with the jurisdiction to entertain the matter.

Section 44(1)(b) of the Children Act provides that an application for an adoption order may be made to the High Court where the child or the applicant is not a citizen of Uganda, and court may, subject to the said Act, grant the application. This court therefore has the jurisdiction to hear and determine this application.

2. Whether the petitioner qualifies to be appointed the adoptive parent of the child.

Section 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 the age of twenty five years and is at least twenty one years older than the child. Section 46 of the same Act 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 three years; has fostered the child for at least thirty six months under the supervision of a PSWO; does not have a criminal record; has a recommendation concerning his/her suitability to adopt from his/her country's PSWO or other competent authority; and has satisfied the court that his/her country of origin will respect and recognize the adoption order.

In this case the petitioner is a sole applicant. She is a female now aged 34 years, judging from the date of birth of 01/05/81 indicated in a copy of her passport on the court record. The child is revealed by a copy of her passport on the court record, to have been born on 21/10/05. She is currently aged about eight and a half years. This makes the applicant, who is above 25 years, to be more than 21 years older than the child. Thus the applicant falls within the age requirements spelt out under section 45(1)(a) of the Children Act.

The applicant is a Dutch (Netherlands) citizen. This places her within the legal requirements of section 46 of the Children Act, being a non citizen of Uganda. The affidavit evidence on record shows that she started residing with the child in Uganda since 27/12/09. The child was placed in her care on 27/12/09 and she got a foster care for her on 26/01/10. The certificate of good conduct by the Uganda Police, National Central Bureau of Interpol Kampala, which is on the court record, shows that she does not have a criminal record. The PWSO Mukono district, in his report on record, has recommended the applicant as a suitable person to adopt the child. There is also a report by a Council Investigator for the Children and Family Court Advisory and Support Service, Zwolle, Netherlands, that the applicant and the child will have a good future in the Netherlands. This makes her fully compliant with the requirements in section 46 of the Children Act.

Under section 47 of the Children Act, the consent of the child's parents is necessary if the parents are known, but it may be dispensed with if the parents are incapable of giving it. The adduced evidence shows that the child's parents are not known. However Noah's Ark Children Ministry which had legal custody of the child allowed the child to be placed with the applicant as her foster parent. This would call for the parent's consent to be dispensed with under section 47 of the Children Act.

The petitioner therefore qualifies to be appointed the adoptive parent of the child.

***3. Whether the application is made in the best interests of the child*.**

Section 3 and the first schedule of the Children Act provide that the welfare principle shall be of paramount consideration when making decisions concerning children. The court shall in particular have regard to the ascertainable wishes and feelings of the child concerned considered in light of his/her age and understanding; the child's physical, emotional and educational needs; the likely effect of any changes in the child's circumstances; the child's age, sex, background and any other circumstances relevant in the matter; any harm that the child has suffered or is at the risk of suffering; and where relevant, the capacity of the child's parents, guardians or others involved in the care of the child in meeting his/her needs.

It is evident that the child **Tusabiri Suzannah Myrthe** was abandoned by her unknown parents. She was found in a carpentry workshop. Her parents have never been located. She was cared for, first, by Noah's Ark Children Ministry and later by the applicant who took her on and fostered her under the supervision of a PSWO. The medical report on the court record reveals the child to be normal. The report of a speech therapist on the record however shows that the child severely lags behind in speech - language development compared to her peers. There is also evidence on record that the child was placed under speech therapy treatment by the applicant. The applicant, in addition to her sworn affidavit, stated to this court on oath that she already feels like a mother to the child because she has been staying with her for the last four years. She stated that she was neither given nor did she give anything as consideration to adopt the child,

The foregoing circumstances, in my opinion, are exceptional circumstances rendering the child **Tusabiri Suzannah Myrthe** to be very vulnerable and in need of a home, care and love. The child has no known parents. She was in an institution, which should be a last resort for homeless

children, until the applicant took her on and offered her a family as a foster parent. The applicant is availing her all necessities of life including education and availing therapy for her speech impairment. The Constitution of Uganda and the Children Act stipulate that a child has a right to have a home and be cared for. The applicant is able and willing to avail such home to the child, having already fostered her for more than three years. No other person is availing such home. In that respect I would agree that this application is in the best interests of the child.

The counsel's prayer that the petitioner be allowed to immigrate with the child to the Netherlands when her contract expires would, in my opinion be superfluous and unnecessary if an adoption order, which places the adoptive parent in the "shoes" of the child's parents, is granted. As an adoptive parent she would be free to move with her child anywhere, like any parent would, unless it is not in the child's best interests.

In the circumstances, based on the adduced evidence, and for reasons given, I am satisfied that the petitioner has complied with the legal requirements to adopt the child, and that the adoption will be in the best interests of the child.

It is accordingly ordered as follows:-

1. An order for the adoption and custody of the said **Tusabiri Suzannah Myrthe** is granted to **Nauta Reny Rinskje**.
2. The Registrar General of Births and Deaths shall make an entry recording this adoption in the Adopted Children Register.
3. The adoption order shall be furnished to the Consular Department in the Ministry of Foreign Affairs Kampala.
4. Costs of the petition shall be provided for by the petitioner.

Dated at Kampala this 8th day of May 2014

Percy Night Tuhaise

Judge.

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