

UGANDA / JUDGMENT

In Re: X.D (Adoption Cause No. 03 of 2018)

[2019] UGHCFD 14 (18 September 2019)

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COURT

HC: Family Division (Uganda)

BEFORE

Mukwaya, J

CASE / FILE NUMBER

Adoption Cause No. 03 of 2018

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THE REPUBLIC OF UGANDA**IN THE HIGH COURT OF UGANDA AT KAMPALA****ADOPTION CAUSE No. 03 OF 2018****IN THE MATTER OF JEREMIAH CHEGE****AND****IN THE MATTER OF A PETITION FOR ADOPTION BY ANTHONY CHEGE KAMAU AND EUNICE MWELU KITENG'E****BEFORE: Hon. Lady Justice Olive Kazaarwe Mukwaya****RULING****The Petitioners**

The petitioners, Anthony Chege Kamau (45) and Eunice Mwelu Kiteng'e (45) are Kenyan citizens and holders of passports No. B165102 and No. CK11653 respectively. They were married on the 25th of May 2003.

The couple reside at Plot 259 Kulubya Lane, Ggaba Trading Centre, Ggaba Ward, Makindye Division, Kampala District together with their two biological children, Natalie Chege aged 18 years old and Tiffany Chege aged 11 years old. They also have another home at Kitengela, Nairobi, Kenya. While the 1st petitioner is gainfully employed as the General Manager of TPS (Uganda) trading as Kampala Serena Hotel, the 2nd petitioner is a stay at home mother. Copies of the petitioners' passports and proof of employment for the 1st petitioner marked "A" and "D1" are attached to the petition.

The petitioners are jointly seeking to adopt the child, Jeremiah Chege, a male minor aged approximately 2 years old. The petition is supported by the affidavits of the petitioners, their marriage certificate, criminal clearance letters from Interpol and their medical reports.

The Child

The circumstances of the child, Jeremiah Chege are that the whereabouts of his parents are unknown.

Ms. Angabire Patience, the Probation and Social Welfare Officer of Makindye Division Urban Council in her report to this court, gave an account of the background of the child. In that report, she stated that on the 1st September 2017, a baby boy estimated to be about 2 weeks old by police officers was abandoned by an unknown person in Kitintale, Safina Zone, Luzira Nakawa Division of Kampala District. The child was subsequently found by a one Nekesa Jalia who reported the matter to the local defence secretary of the area, Mr. Jamiru Matovu. Mr. Matovu then forwarded the baby to Child and Family Protection Unit of Kitintale police station and a case of Child abandonment was opened under SD ref: 02/01/09/2017.

Subsequently, the child was taken to Mulago Regional referral hospital and admitted for 5 days for hypoglycaemia. On 6th September 2017, the child was discharged and the case referred to the Probation and Social Welfare Officer of Nakawa Division of Kampala District. Ms. Angabire, on 7th September 2017 placed the child with Loving Hearts Babies Home located in Munyonyo area in Makindye Division for emergency care and protection as tracing for his parents or relatives commenced.

Mr. Sande Gerald, a Social Worker at Loving Hearts Babies Home, confirmed in his sworn affidavit that on the 6th day of September, he received a phone call from the Nakawa Division Probation and Social Welfare Office during which he was informed about the finding of an abandoned new-born baby. He was then requested to proceed to Kitintale Police Station to collect the baby for proper care and protection. He averred that after being discharged from the hospital, the child started to reside at Loving Hearts Babies Home where he was found by the petitioners who developed a keen interest in him.

Mr. Sande added that in the weeks and months that followed after his arrival at the home, they unsuccessfully made several attempts to trace the child's birth family through the use of multiple posters, newspaper notifications and inquiries including one in Bukedde Newspaper of Thursday November 30th 2017. A copy of the newspaper notice is attached to his affidavit and marked "B". He further stated that a Care Order vide Care Application No. 187 of 2018 from the Chief Magistrates Court of Nakawa was issued to the home in respect of the child.

Ms. Angabire Patience in her affidavit indicated that she met the child at Loving Hearts Babies Home Munyonyo in her capacity as a Probation and Social Welfare Officer. She stated that the applicants took keen interest in raising him as their own and sought her assistance in helping them with the necessary paper work and procedures in this regard. Later, the child was placed in their care for fostering and during this period she issued the relevant documents including the

form of undertaking, prospective foster period record and foster child record. Copies of the said documents were attached to her affidavit and marked A1, A2 and A3 respectively. On the 6th of December 2017, the petitioners undertook the child for fostering under her supervision and a care order No. 1175 of 2018 to that effect was granted by the Chief Magistrates Court at Makindye Division to them on the 29th of February 2018. The child's name was thereafter changed from Jeremiah to Jeremiah Chege.

In her report she noted that the petitioners have fostered the child, Jeremiah for a period of 1 year and 9 months under her supervision. During this period, she was impressed by the way the applicants have brought up their children with love and sense of respect. She further highlighted her observations between the child and petitioners which revealed that their relationship is parental, friendly and affectionate. She added that the child had blended very well with all the family members. She concluded the report by stating that the applicants are ready, willing and committed to providing maximum treatment and care towards the child therefore she recommended that given her assessment during the fostering period, granting the adoption order is in the best interests of the child.

The Petition

The petitioners have petitioned this court for the adoption of the child. According to their affidavits in support of the petition, both petitioners stated that they fostered the child, Jeremiah Chege since 6th December 2017 under the supervision of the Angabire Patience, a Probation and Social Officer. They added that they have both become strongly attached and bonded with the child and he perceives them as one would perceive his biological parents. The petitioners also contended that they are medically fit and do not suffer from any medical or contagious diseases.

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 Jeremiah Chege as prayed in their petition. This court in so doing had to answer two questions:

1. **Whether the petitioners are qualified to be appointed the adoptive parents of Jeremiah Chege?**
2. **Whether the petition was in the best interest of Jeremiah Chege?**

Issue 1

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; in the case of an application by one of the spouses, the other has consented to the adoption.

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.

Anthony Chege Kamau and Eunice Mwelu Kiteng'e are Kenyan Citizens, both aged 45 years old making them 43 years older than the child, Jeremiah Chege. The child has been in their care for approximately 1 year and 9 months in Uganda which satisfies the fostering period as envisaged under the law.

The Probation and Social Welfare report detailed the bond between the child, the petitioners and their extended family. It also covered the personal information of the petitioners, their motivation to foster a child, the petitioners' medical information and the current health of the child, the nature and type of home that the child lived in during the fostering period, among other things. The report concluded by recommending that it is in the best interest of the child that the adoption order be granted to the petitioners.

In addition to the report, the petitioners attached certificates of good conduct both dated 18th of February 2019 provided by the Directorate of Interpol and International relations confirming that they both had no criminal records in Uganda. Medical reports authored by Dr. Mukisa Ronald of Wentz Medical Centre on the 17th February, 2019 showed that both were in good health. The reports were marked "E". The petitioners further attached recommendations concerning their suitability to adopt the minor from friends to whom both of them are well known.

The petitioners also averred in their petition that the adoption orders granted by this Honourable Court will be respected by their home country.

It is this Court's finding therefore that the petitioners are suitable adoptive parents under intercountry adoption.

Issue 2

Whether the petition was in the best interest of Tendo Daniels?

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**

In the instant petition, the whereabouts of the biological parents or relatives of the child are unknown. All efforts to trace them proved futile. The petitioners welcomed the child into their family and home and have cared for him for almost 2 years now. This court had the opportunity of observing the child and the petitioners when they appeared in court. It was clearly evident that the child had bonded with them and their biological children. The child is flourishing and thriving under their care and evidently happy. The petitioners are the only parents he has ever known. They have fulfilled the necessary requirements under the law to be appointed adoptive parents to the child. This court has no doubt that the granting of this application is in the best interests of child, Jeremiah Chege.

I hereby make the following orders:

1. An order of Adoption of the child Jeremiah Chege by the petitioners, Anthony Chege Kamau and Eunice Mwelu Kiteng'e is allowed.
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.
4. Costs of the Petition to be provided for by the petitioners.

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Olive Kazaarwe Mukwaya

JUDGE

Dated at Kampala this 18th day of September 2019

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