

UGANDA / JUDGMENT

In the matter for Adoption of Mirembe Angel by Rudy Ray Lee & Jessica Lee Joe Lee (Adoption Cause No. 32 of 2018) [2019] UGHCFD 16 (13 June 2019)

[2019] UGHCFD 16

COURT

HC: Family Division (Uganda)

BEFORE

Mukwaya, J

CASE / FILE NUMBER

Adoption Cause No. 32 of 2018

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

IN THE MATTER OF THE CHILDREN ACT, CAP 59 AS AMENDED BY ACT No.16 OF 2016

ADOPTION CAUSE No. 32 OF 2018

AND IN THE MATTER FOR THE ADOPTION OF MIREMBE ANGEL BY RUDY RAY

LEE AND JESSICA LEE JOE LEE

BEFORE: HON. LADY JUSTICE OLIVE KAZAARWE MUKWAYA

RULING

This is a petition by which the petitioners jointly seek an order of adoption in respect of a child, Mirembe Angel, a female child of just under two years old. The petitioners are a married couple, having been married on the 29th of October 2005 at the Hickory Baptist Church in Kentucky, United States of America. They are both ordinarily resident at 1987 Hamburg Road Kevil, Kentucky, USA. They have lived together since 2005, when they got married, and are parents to two daughters, Olivia Mae Lee, 9 years old and Mazi Von Lee, 7 years old. Both petitioners are American citizens; Rudy Ray Lee is a Project Engineer at Marcum Engineering and Jessica Joe Lee is a Technical Writer, Senior at Four Rivers Nuclear Partnership, LLC.

The circumstances of the child, Mirembe Angel are that the whereabouts of her parents are unknown. Bwayo Fred, a taxi guide at Namirembe Road Taxi Park in Kampala Central swore an affidavit as to the background of the child. On 21st August 2016, at around 7.30am, he was passing by a garbage heap and in there was a polythene bag, which started shaking. When he checked the

bag, he found a baby girl, wet and shivering. Upon advice of passersby, he found clothes and kept her dry and reported the rescue of the baby to the nearby Police Station and handed the baby over to them. The case was registered at Old Kampala Police Station under the reference, CFPR/246/2016. Mr. Bwayo denied knowledge of the child's parents and confirmed that since her rescue he had received visits from a police officer from Old Kampala Police Station; a social worker from Peace Transitional Home and lawyers from Mugume & Co Advocates, who appeared at his work place inquiring about the child.

Ms. Aidah Nkinzi, the Director of Peace Transitional Home, confirmed in her sworn affidavit that a child was received into the home on the 21st August 2016, upon referral from the Probation Officer of Kampala Central Division, Peter Lwanga Mayanja, the letter of referral was attached to the affidavit and marked 'D'. The Home named the child, 'Mirembe Angel' and subsequently applied for a Care Order for the child. It was granted by the Mwanga II Magistrate's Court on the 23rd March 2017. A copy was attached to the affidavit and marked 'F'. Efforts to trace the parents of the child were made. Newspaper adverts in the Bukedde Newspaper dated the 7th day of January 2017, attached to the affidavit and marked 'H'. These were coupled with the efforts of one Joseph Kaleebu, the Home's social worker who has visited the scene of recovery of the child on several occasions and made inquiries with the local police and leaders about the child's parents, to no avail.

The Senior Probation and Social Welfare Officer of Luwero District, Ms Joyce Namigadde in her affidavit stated that she learnt of the child after Ms. Nkinzi had drawn the matter to her attention. In February 2016, the petitioners before this Court, through the Carolina Adoption Services Agency, expressed interest in fostering a child in need of a family, with the view of eventually adopting her. The petitioners later travelled to Uganda and applied to be appointed the child's foster parents, which order Ms. Namigadde granted on the 10th of February 2017.

The Lees were unable to fulfil the legal requirements of the 12 months consecutive stay in the country, given that they were both full term employees and parents of school going children of whom they had primary responsibility back in the USA. They opted to appoint one Kagere Sarah Kitimbo as their Attorney to look after the child while they were away, as evidenced by attachment 'I' to Ms. Aidah Nkinzi's affidavit. They did visit her on three separate occasions to bond with her. In addition, they made provision for all her needs during this time. It was against this background that Ms. Namigadde made a recommendation that this Court considers their application positively.

It is the duty of this Court to determine the following issues:

1. Whether the petitioners have fulfilled the requirements for inter country adoption under the Laws of Uganda?
2. Whether the petitioners are entitled to the prayers made in the petition?

Issue 1:

Part VII of The Children's Act Cap 59 as amended by Act No. 16 of 2016, provides for the basic requirements for inter-country adoption. The petitioners are aged 40 years and 35 years respectively, (birth certificates are marked F1 AND F2) while the child is approximately 2 years old. Both are 25 years older than the child. They therefore fulfil the requirement under S. 45(1) (a) of the Children's Act.

Turning to S.56 of the Children's Act, applicants for Inter Country adoption must have; stayed in Uganda for at least 12 months, fostered the child for 12 months, must not have a criminal record, must have a recommendation concerning their suitability to adopt a child from their country's probation and welfare office or other competent authority and satisfy the Court that his or her country of origin will respect and recognize the adoption order.

The petitioners have been cleared by the Paducah Police Department, McCracken County, Kentucky, USA, in attachments to their affidavits marked, 'G' and 'H'. The CCAI Adoption Services filed an Adoptive Parent Home Study Update for Uganda marked 'J', which approved them and recommended them for the adoption of one child of either sex from Uganda. They were approved and recommended for a child up to three years old with Chinese Children Adoption International.

With regard to fostering the child for a year, the Lees stated that they were unable to do so but they appointed an Attorney to do so on their behalf. Rudy Lee visited the country four times during the foster period to bond with the child while Jessica visited three times. S. 14 of the Children's Act as amended by Act 9 of 2016 amended S. 45 (4) by permitting the Court in exceptional circumstances to waive any of the specified requirements. The Hon. Mr. Justice Moses Mukiibi dealt with a similar situation In the matter of Amari Daphine, and the Matter of a Petition for Adoption by Christopher Ray Russell and Willa Kirstan Russell, Adoption Cause 47 of 2017; he suggested that a term ought to be used in situations where a prospective adoptive parent appoints a capable third party to do the physical fostering while the needs are met by the prospective adoptive parent, he suggested, 'constructive fostering'.

The child Mirembe Angel was present in Court during the hearing. From the observation of this Court the child was comfortable with the Lees, she has bonded with them, especially Rudy Lee who was carrying her at the time of the hearing. The Lees have established that they have a stable home environment and they have proven that they are suitable parents to their biological children, Olivia and Mazi. Mr. Mugume, their advocate implored this Court to find the proxy fostering sufficient, with the combination of the four total country visits made to bond with the child.

It is the duty of the Court to consider the welfare of the child in such circumstances. Court must do its duty and analyse the pieces of evidence before it, to satisfy itself that its orders shall not be adverse to the interests of the child. I must say that Mirembe Angel's background story was nothing short of a miracle. Her rescue from a garbage heap was a marvel. The picture she presents today, almost two years later of a healthy beautiful child is mainly because the Lees have provided for her over the last eighteen months. Their reasons for being unable to foster the child,

for the consecutive 12 months, are reasonable in the opinion of this Court. It was not practical for them to leave their jobs and parental responsibilities unattended for the 12 month period.

The CCAI filed a thoroughly detailed report on the Lee's suitability as adoptive parents. They have the economic means and are able to provide a stable, loving home in which Mirembe can grow up into a productive adult. This Court finds no reason to deny Mirembe Angel the opportunity to be parented by them, especially since it is clearly evident that at least one of her biological parents was not willing to fulfil that responsibility. This Court finds that the foregoing factors constitute exceptional circumstances to justify the waiver of requirement of the 12 months fostering period.

Issue 2

This Court finds that it is in the best interests of the child, Mirembe Angel that this petition is allowed. Accordingly this Court orders as follows:

1. An order of Adoption of the Child Mirembe Angel by the Petitioners Rudy Ray Lee and Jessica Joe Lee is issued.
2. Petitioners are allowed to change the child's name from Mirembe Angel to Mirembe Angel Lee.
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.

DATED AT KAMPALA THIS 13TH DAY OF JUNE 2018

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Olive Kazaarwe Mukwaya

JUDGE

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