

UGANDA / JUDGMENT

**In the matter of an Adoption of Asobola
Praise & Kwagala Martha by Kathleen Sue
Bowman (ADOPTION CAUSE NO. 002 OF
2019) [2019] UGHCCD 203 (18 June 2019)
[2019] UGHCCD 203**

COURT

HC: Civil Division (Uganda)

BEFORE

Mutonyi, J

CASE / FILE NUMBER

ADOPTION CAUSE NO. 002 OF 2019

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THE REPUBLIC OF UGANDA**IN THE HIGH COURT OF UGANDA****HOLDEN AT MUKONO****ADOPTION CAUSE NO. 002 OF 2019****IN THE MATTER OF AN ADOPTION OF ASOBOLA PRAISE AND KWAGALA MARTHA BY
KATHLEEN SUE BOWMAN****BEFORE HON. LADY JUSTICE MARGARET MUTONYI, JUDGE HIGH COURT****R U L I N G****Introduction**

This Petition is brought under Article 139 of the 1995 Constitution of The Republic of Uganda, sections 14, 33 and 39 of the Judicature Act cap 13, sections 3, 44 and 46 of The Children Act Cap 59 and rule 3 of the Children (adoption and children) rules SI.159-1 for the adoption of **ASOBOLA PRAISE** and **KWAGALA MARTH** herein after referred to as the children by **KATHLEEN SUE BOWMAN** herein after referred to as the Petitioner.

The Petitioner through her Counsel Isaac Mugume of Mugume & Co. Advocates is seeking for the following orders:

1. That KATHLEEN SUE BOWMAN be appointed adoptive parent to ASOBOLA PRAISE and KWAGALA MARTHA and the children be authorized to emigrate with their adoptive parent to the United States of America to fulfill her parental responsibilities.
2. That the parental rights of having exclusive care, custody, control, parental responsibility for their maintenance, education, medical care, previously with the biological parents be extinguished and vested in the adoptive parents.
3. That the family name '**Bowman**' be added on to the children's names.
4. And such other orders be made as the case may be.

The Petition is supported by the Affidavits of **Kathleen Sue Bowman** dated 19th March 2019, Katikiro Samuel Kwagala, Martha's maternal uncle dated 25th March 2019, Kiteme Scovia, Asobola Praise's maternal grandmother dated 25th March 2019, Kisaiza Richard the LC1 Chairman of Kayira Village dated 25th March 2019, 2 (two) affidavits by Pastor Shiundu John Mukuya of Kidron Children's Home both dated 22nd March 2019 and Lydia Naigaga, the senior probation and welfare office for Buikwe District dated 22nd March 2019.

All the deponents of the supporting affidavits appeared before court to confirm the information in their affidavits to ensure the authenticity of the evidence.

The Petition is for ***adoption*** of the two children which is defined as ***the creation of a parent – child relationship by a judicial Order between two parties who are unrelated creating a lifelong relationship of parenthood between a child and the adoptive parent.***

The Background of the children

Asobola Praise

The child is two(2) years and a daughter to Kifuko Byayela Lydia according PE11 which is her short birth certificate issued by Kisozi Sub-county on 18th October 2018. The child's father is not known. Kiteme Scovia (PW2) the mother to Kifuko Byayela informed court that her daughter has 5 children and is mentally ill. Medical evidence was exhibited in court and marked as PE12. The medical report was prepared by the medical personnel from Jinja Referral Regional hospital dated 28th January 2018). The child Asobola Praise was subjected to very harsh conditions because she was born when her mother was a mental lunatic.

Both the mother and child were then rescued from the harsh environment by Fida her sister and taken to the grandmother's home at Nawantale. The child's mother and grandmother had no means to take care of the baby.

Since Kifuko was a lunatic, she started loitering around the village with her child.

It was at this point in time that the grandmother and the local leaders resolved to remove the child from her and handed her over to Kidron Children's Home for safety when she was barely 2 days old.

The child admission form to Kidron is dated 7th April 2017 and marked PE24.

She informed this court that she knew about the petitioner's desire to adopt the child and she had given her irrevocable consent.

According to John Shiundu of Kidron Children Home, having secured the child's safety, they embarked on the search for the child's father via regular announcements on local radio stations and advertisements in the Newspapers to no avail exhibit PE26 refers. The home went further to carry out a paternity test on kifuko's first husband as per exhibit PE1, but the results turned out negative.

Kidron Children's Home then applied for and was granted a foster care order for Asobola Praise on 4th July 2017 (attached as Annexure "E") and the child lived at the Home until 14th March 2018 when she was placed in the hands of the Petitioner by way of a foster care placement order by Njeru court marked as PE15.

John Shiundu noted that whereas the child's maternal family loved her and always visited her at the Home, they were unable to take care of her and preferred that she stayed at the home. However, he informed this court that the Home did not provide a permanent place for the children as it is only temporal and transitional. He further told court that the Petitioner lived at his house for three weeks before shifting to the rented place. His visit to her place helped him discover how loving and committed she is to the children. He recommended the child for adoption by the petitioner as the best alternative and only hope for a holistic family life.

Kwagala Martha

Martha is aged 2 and half years and a daughter to Aliranwa Tabisa of Kayira village, Bupyana Parish, Gadumire sub-county in Kaliro District. Aliranwa Tabisa is mentally ill and suffering from chronic psychosis which state she has been in for the last thirteen years as per the Medical Report dated 6th March 2019 and marked PE2. She had three children earlier on with her husband who abandoned her when she became mentally sick.

Because of her unstable mind, men took advantage of her and this resulted into a pregnancy from which she gave birth to a baby girl on the 20th day of October 2016. The father is unknown.

According to Katikiro Samuel Kwagala (PW3) Martha's maternal uncle, due to the inadequate care given to this baby by AliranwaTabisa, she became severely malnourished. Consequently, the LC1 chairman of Kayira village together with the Parish Internal Security officer contacted the Kamuli District Probation Officer who referred the child to Kidron Children's home on 4th January 2017 as per PE23.

The Home embarked on the search for the child's father via newspaper advertisements and radio announcements but all efforts did not yield anything. DNA test was conducted on one Silvo Musiyire her former husband who was suspected to be the father but the results turned out negative.

The child lived at the Home till the 14th of March 2017 when she was handed over to the petitioner by way of a care order marked PE15.

The child's paternal uncle was in court and he consented to this adoption given that none of the family members has the ability to raise this child.

Brief background of the Petitioner

Kathleen Sue Bowman is an American citizen, holder of passport No 557189047. She has a Residential address at 44801 Little River Airport Road, Little River, California 95456. While in Uganda, she is residing at Plot 28A Nile Crescent Jinja where she has lived since 2nd February 2018. (A copy of her passport and Entry Visa marked PE4).

She is employed as a Yoga Instructor at Yoga Shine of Mendocino and also runs an Air BNB hospitality business back home in the USA.

She earns an annual income of US\$42,000 (Forty two thousand US dollars). (A copy of her financial statement and recommendation from her employer were exhibited in court and marked 'B' & 'B1').

She is not married but has two sons, Dane Bowman aged 32 years old and Jade Bowman aged 11 years old whom she adopted from Guatemala.

She does not have any criminal record in Uganda or anywhere else as per her records from The Federal Bureau of Investigations, California State Police Records, California Child Protective Services,

The County of Mendocino Office of the Sheriff- Coroner and Interpol Uganda. (A Copy of her criminal back ground check was admitted in evidence and marked G1, G2& G3).

She has a Home study Report from The Family Network Inc. which recommends her as a suitable adoptive parent for the children. (A copy of the Home Study report is on record marked 'H').

The Probation and Social Welfare Officer of Buikwe has been supervising her during the fostering of the children which she started on the 2nd day of February 2018 and 9th day of March 2018 respectively and she is satisfied that she will make a good mother for the girls. (Copies of their Probation reports are on record and marked 'N' and 'O' respectively).

The Law Applicable

Section 44(1) (b) of the Children Act confers jurisdiction upon this court to hear adoption application and grant adoption orders, where the petitioner or the child is not a citizen of Ugandan like in the instant case. The children here in are Ugandans while the Petitioner is an American citizen.

Issues

Two issues were framed for this court's determination:

1. Whether the Petitioner is eligible to adopt these children.
2. Whether it's in the children's best interests to be adopted by the Petitioner.

Resolution of issues

Issue1; Whether the Petitioner is eligible to adopt these children

In his submissions, Counsel for the Petitioner referred this court to ***Section 45 (1) (a) of the Children Act*** which states that; an adoption order may be granted to a sole applicant or jointly to spouses. It further specifies that the petitioner should be 25 years of age and above and not less than 21 years older than the child who is the subject of the Petition.

He submitted that the petitioner is a female adult aged 60 years who is desirous of adopting two girls aged 2 and 2&1/2 years of age. He submitted that she clearly fulfilled the age difference requirement.

This court concurs with him on the issue of age.

Section 46 as amended by Section 14 of the Children Amendment ACT NO 16 OF 2016 lays out conditions that should be fulfilled by an applicant who is not a citizen of Uganda before he/she can be appointed by court as an adoptive parent for a Ugandan child to wit;

1. He or she must have stayed in Uganda continuously for 12 months,
2. Fostered the child for 12 months,
3. Must not have a criminal record,
4. Must have a recommendation concerning his or her suitability to adopt a child from their country's probation and welfare office or other competent authority and
5. He/she should satisfy court that his or her country of origin will respect and recognize the adoption order.

Counsel for the Petitioner filed written submissions that have been put under consideration while writing this Ruling.

From the evidence on record, court observed that whereas KATHLEEN SUE BOWMAN is an American citizen as per her passport No. 557189047 and a resident of 44801 Little River Airport, California 95456, she is currently residing at Plot 28A Nile Crescent Jinja where she has been staying since the 02nd day of February 2018 to date as evidenced by a letter of recommendation from Mr. Kiirya Richard the area LC1 Chairman and her entry visa which commenced on the 1st day of February 2018.

The evidence on record further proves that the Petitioner has fostered the 2 children since the 2nd day of February 2018 for Asobola Praise and the 9th day of March 2018 for Kwagala Martha, under the supervision of the probation and social welfare officer for Buikwe District .(see PE13 and PE15).

The Petitioner does not have any criminal record both in her Home Country or anywhere else as per the certificate of good conduct from Interpol Uganda (PE8) and a criminal record affidavit and clearance from the county of Mendocino office of the Sherriff- California marked (PE9 and PE10).

With regard to her suitability to adopt the children, the Petitioner has submitted a report compiled by The Family Network Inc. a Hague Accredited agency which has highly recommended her as a suitable adoptive parent for the children. The same is dated 30th June 2017 and marked PE7. In addition, the Probation Officer for Buikwe filed an affidavit on court record to which she attached her report fully recommending the Petitioner as a suitable adoptive parent for the children.

The Petitioner confirmed to this court that her country of origin would respect this adoption order as has been its practice with all other cases of adoption. She further stated on oath in this court that where she lives back home is very progressive and the people are open minded affirming the safety of the children to this court.

Court is satisfied that the Petitioner has fully complied with the mandatory requirements under section 46 of the Children Act as amended.

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 or cannot be found.

Court observed that the known parents of these children who were present in court are all incapable of consenting to this process due to their mental impairment.

To confirm that the children are not just being trafficked but belong to a family, their closest relatives, Scovia Kiteme (maternal grandmother) and Batyo Bwebali Fida (maternal aunt) have given their irrevocable consent to this adoption for Asobola Praise while Katikilo Samuel (maternal uncle) has consented for Kwagala Martha. This was done after duly explaining the effect of this adoption to them by both counsel and this honorable court.

In view of the evidence on record and interaction with the applicant and the relatives of the children who testified on oath in this court, I am satisfied that the Petitioner has fulfilled all the requirements and legal conditions set forth for an inter-country adoption under the Children's Act as amended.

Issue 2; whether it is in the children's best interests to be adopted by the Petitioner.

Section 3 and the first schedule of the Children Act provides that the welfare principle shall be of paramount consideration when making decisions concerning children and further that 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 to meet his/her needs.

The Petitioner as evidenced in her affidavit and testimony in court has lived with the children since February 2018 for Asobola and March 2018 for Kwagala having taken them from Kidron Children Home a child care facility. She has since been solely responsible for all their personal basic, material, physical, spiritual and emotional needs and growth.

Whereas the children have relatives, it is apparent that their relatives preferred to hand them over to the institution as a safe haven for their growth as compared to their homes as they were financially incapable of raising them.

The intention of child institutions is to keep the vulnerable children temporarily with the view of re-uniting them with their biological family. Where there is no close family member willing to take on the child, the alternative is to identify willing persons to take over parental responsibility through adoption process to provide a family for the children as this is the most ideal for the normal growth of every child where they can be given parental love, guidance, protection and affection.

The mothers of the children are mentally challenged and impaired. They are not capable of raising these children as they are very vulnerable themselves.

The children were handed over to Kidron at a very tender age and the relatives are not only unwilling to take on the children, but lack the financial ability to provide the basics for the children.

This court takes cognizance of the decision in **Deborah Joyce Alitubera Civil Appeal No.70 of 2011** wherein the court recognized the option for the child to live within a nurturing family which is ready to provide him/her with basic needs of life as opposed to an institution that is incapable of providing the personal care that a child needs to thrive physically, mentally, and emotionally.

The Court noted that when children live in institutions, they suffer a range of health and developmental problems and risk lifelong physical, mental and emotional problems. Emphasis mine.

Court has observed that the children who are the subject of this Petition are infants and thus very vulnerable and therefore are in need of care and love in a home setting as opposed to an institution.

This Court observed the Petitioners' conduct with the children and noted that they had a strong bond of love and the Petitioner was ready to do all it takes to provide and care for the children. She has already done a good job in raising them physically, mentally and emotionally. The children looked very healthy and happy.

While on oath, the Petitioner told court that;

“*I have always wanted to have many children but I did not get a chance until now... when I entered the second phase of my life, I thought to myself, what do I do. The answer came to me “Be a mother again” I love children. I look at them as a gift.”*

When asked by court how she intended to take care of the children’s educational needs. She had this to say;

“My adopted son Jon is in a very wonderful school and I will also take them there. I own my own house with no mortgage running. I have attached my financial statement and can look after them with ease.”

Her Financial statement indicating that she earns \$42000 annually and with a net worth of \$1,804,000 is marked PE5.

She further told court that she had arranged with her friends Marco and Susannah to help her children incase anything happened to her. And that further her eldest son was soon getting married and he was very interested in taking care of the children. She further expressed interest in the Ugandan culture which she promised to keep alive as she felt it important for the children to know their origin.

Having the welfare principal in mind which includes both physical and emotional welfare and in view of the above submissions, this court notes that the children are now solely and exclusively dependent on the Petitioner whom they have lived to know and love as a mother. In these children too, the petition has found a fulfilment of her dream to expand her family. Separating them now or denying the petitioner the opportunity to love, raise and nurture these children would amount to cruelty of the highest order and a violation of their universal right to belong to a family.

Court takes serious note of the fact that the Petitioner left the comfort of her home and, country, has endured the separation from her immediate family, friends and clients, to come and live in Uganda for more than a year, in order to qualify to take the two little girls with her. That sacrifice is akin to the love of Jesus Christ for humanity for those who subscribe to Christianity. It is a sign of genuine love far from counterfeit. Denying the children the opportunity to be loved and raised by such a loving person would never be in the interest of the children.

This court is therefore convinced that there would be no better alternative than for this court which is a court of justice to cement the already formed bond between these children and their mother.

Adopting them at this stage is in their best interest.

In the result, the Petition is allowed with the following Orders:

- MUKONO HIGH COURT**

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