

UGANDA / JUDGMENT

In the matter of a petition for adoption of Muwanguzi Jonathan & Kirungi Awesome (Infants) by Kerstin Maria Droll & Benedikt Thomas Droll (Adoption Cause 30 of 2020) [2020] UGHCFD 12 (26 February 2020)
[2020] UGHCFD 12

COURT

HC: Family Division (Uganda)

BEFORE

Okalany, J

CASE / FILE NUMBER

Adoption Cause 30 of 2020

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(FAMILY DIVISION)

ADOPTION CAUSE NO. 30 OF 2020

IN THE MATTER OF CHILDREN ACT, CAP 59 AS AMENDED

AND

IN THE MATTER OF A PETITION FOR ADOPTION OF MUWANGUZI JONATHAN AND KIRUNGI AWESOME (INFANTS), BY KERSTIN MARIA DROLL AND BENEDIKT THOMAS DROLL
(PETITIONERS)

BEFORE: HON. JUSTICE SUSAN OKALANY

RULING

INTRODUCTION

1. This is a petition brought under the provisions of the **Children Act [Cap *59*] (as amended)**, for the adoption of Muwanguzi Jonathan and Kirungi Awesome (herein referred to as children) by Kerstin Maria Droll and Benedikt Thomas Droll (the 1st and 2nd Petitioners). The petitioners seek that:
2. An order for adoption of the children Muwanguzi Jonathan and Kirungi Awesome by the petitioners be made with all the necessary directions;

3. The petitioners be allowed to change the children's names from Muwanguzi Jonathan and Kirungi Awesome to Jona Baracka Droll and Samu Ekuma Droll respectively;
4. The petitioners be allowed to process Ugandan passports for the children;
5. The petitioners be allowed to travel to and /or reside in the Federal Republic of Germany or in any other country of their choice with the children;
6. The costs of the petition be provided with such other orders that court may deem fit.
7. The petition is supported by the affidavits of the petitioners, a supplementary affidavit of the 1st petitioner, the affidavit of Gerald Sande, a Social Worker at Loving Hearts Babies Home and the affidavit of Patience Angabire, the Probation and Social Welfare Officer at Makindye Division of Kampala Capital City Authority, as well as other supporting documents attached to the respective affidavits.
8. When the matter was called for hearing on 22/1/2021, this court examined the petitioners and the children.

BACKGROUND OF THE CHILDREN

Muwanguzi Jonathan

1. He was born on 20/9/2015. He was found abandoned in Kisalosaloo village, urban council Kyebando ward, Kawempe Division on 24/9/2015, by unknown persons. On 24/12/2015, *vide* Kiira Road Police Station SD REF: 40/24/12/15, Loving Hearts Babies Home received a three months old baby from the police on the recommendation of Ms. Hilda Cheptoris the Probation and Social Welfare Officer of Nakawa Division. The child was named by the said baby's home as Jonathan Muwanguzi.
2. Kira Road Police together with Loving Hearts Babies Home, Ms. Hilda Cheptoris and Ms. Patience Angabire the Probation and Social Welfare Officer Makindye Division ((herein after referred to as the Probation Officer Makindye) as well as the area Chairperson of Kisalosaloo village urban council in Kyebando Ward, Kawempe, made several attempts to find the child's family using posters and a newspaper advert in the Bukedde newspaper of 4th July 2016. Their attempts proved futile.
3. On 25/4/2017, Loving Hearts Babies Home obtained a Care Order in respect of Muwanguzi Jonathan from the Family and Children Court at Nakawa, *vide* Care Order Application No. 127 of 2016.

Kirungi Awesome

1. The child was born on 19/3/2017. He was found by a one Ekuma Rashid, dumped in a pit latrine in Corner village, urban council, Kazo Angola ward, Kawempe Division in Kampala. For about 3 months, the child was under the care of Mr. Ekuma Rashid and his wife, until 19/6/2017, when the child was taken to Loving Hearts Babies Home on the recommendation of an un named Probation and Social Welfare Officer Kawempe for care and protection. The child was named Awesome Kirungi.
2. Subsequently, the Kawempe Police together with Loving Hearts Babies Home, the Probation and Social Welfare Officer of both Kawempe and the Probation Officer Makindye as well as the area Chairperson of Corner village urban council, Kazo Angola ward, Kawempe division in Kampala, made several attempts to trace for the child's family using posters and a newspaper notification in the Bukedde newspaper of Thursday 30th November 2017.
3. On 5/12/2017, Loving Hearts Babies Home obtained a Care Order in respect of Awesome Kirungi, *vide* Care Order Application No. 127 of 2016 at Family and Children Court at Mwanga II.

BACKGROUND OF THE PETITIONERS

1. The petitioners are a married couple and citizens of the Federal Republic of Germany. They are 32 and 33 years old respectively. They have continuously stayed in Uganda from 13/6/2019 to date. They are residents of Kawuku village, urban council, Gaba ward in Makindye division, Kampala.
2. According to their affidavit evidence, the petitioners' journey in the adoption process started when they became a couple. While working with children groups in Germany and in different orphanages, as well in child care institutions in Africa, particularly in Kilimanjaro Orphanage in Moshi Tanzania and Obrain school for the Masai among others, the petitioners experienced the deep longings of every child for individual love, attention and support. Although the petitioners are able to have biological children, their wish is to first adopt two or three children and then decide whether to have a biological child.
3. According to the petitioners, they expressed their interest in fostering and adopting Ugandan children in December 2016 to the youth welfare department, youth office of the state central adoption authority in Baden-Wurttemberg, Federal Republic of Germany (herein after referred to as the Central Adoption Authority) and to Ms. Patience Angabire the Probation and Social Welfare and Officer Kampala Capital City Authority, Makindye Division.
4. The Central Adoption Authority advised the petitioners to obtain written confirmation from the Uganda Ministry of Gender, Labour and Social Development in the intended international adoption, which confirmation they obtained by letter on 29/12/2016. On the 24th to 25th of March 2017, the petitioners attended a preparation seminar for adoption

candidates, organized by the Central Adoption Unit on 6/11/2017. They also underwent a medical assessment to prove their health status for the adoption. They were both certified mentally and physically fit and capable of caring for a child. The certificate of attendance was attached to the 2nd petitioner's affidavit in support of the petition and marked "B6" while the medical certificate was attached and marked "B7".

5. Between December 2016 and February 2018, the Central Adoption Authority cooperated with the Uganda's Ministry of Gender, Labour and Social Development (MoGLSD) regarding the intended inter-country adoption. The Authority shared all the relevant information with the Ministry and carried out extensive assessment on their suitability to adopt. The Central Adoption Authority found the petitioners fit for adoption.
6. On 8/1/2019, the petitioners through the Probation Officer Makindye Division applied to foster the children. Between 11/1/2019 and 13/8/2019, the Probation Officer Makindye conducted a pre-adoption assessment on the petitioners and found them capable of parenting the children. Also, on 26/2/2019, the Probation Office Makindye, presented the petitioners to the Alternative Care Panel of the (MoGLSD) at Namirembe Resource Center, where they were both approved as suitable adoptive parents. On 13/8/2019, she placed the children under the foster care of the petitioners.
7. On 5/9/2019, the petitioners obtained Care Orders *vide* Applications No. 43 and 44 of 2019, at the Children and Family Court Makindye in respect of the two children. The petitioners currently reside with the children at Kawuku village having fostered them since 5/9/2019, when they were 4 and 2 years old respectively.
8. The 1st petitioner is a primary school teacher, previously working at Vincenti primary school, Baden-Baden and is currently on paid parental leave, while the 2nd petitioner is a mechanical engineer working for Schaeffler Automotive GMBH & Co. KG, IndustriestraBe3, 77815 Buhl, Federal Republic of Germany. Annexure "B1", attached to the 2nd petitioner's affidavit in support of the petition is proof of his employment.
9. The petitioners have no criminal record in Germany or any other country, their suitability to adopt has been certified by authorities in Germany, the Probation Officer Makindye and the Alternative Care Panel of the MoGLSD. They affirm that their country of origin will respect and recognize the adoption order granted by this court.

REPRESENTATION

1. At the hearing of this matter, the petitioners were represented by Mr. Kizito Sekitoleko.

SUBMISSIONS IN SUPPORT OF THE PETITION

1. Counsel Sekitoleko addressed the Court through written submissions, which I will consider in the resolution of this application. He raised three issues for resolution as follows:
2. Whether the High Court is seized with the jurisdiction to entertain the matter;

3. Whether the petitioners qualify to be appointed the adoptive parents of the children; and
4. Whether the petition is in the best interest of the children.

RESOLUTION

1. I have carefully considered this petition, the submissions of counsel and the law applicable.

Issue No. 1: Whether the High Court is seized with the jurisdiction to entertain the matter

1. **Section 44(1)(b) of the Children Act** (as amended), 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 the Court may, subject to the Act, grant the application. In the instant case, the petitioners are citizens of the Federal Republic of Germany, evidenced by copies of the biodata pages of their passports jointly attached to the petition as Annexure “A1”. The fact that the petitioners are non-citizens of Uganda automatically gives the High Court jurisdiction to hear and determine this application.

***Issue No. 2: Whether the petitioners qualify to be appointed the adoptive parents of the children*.**

The Children Act as amended, in Sections 45(1), 45(4), 45(5), 46 (1) and 46 (2), stipulates conditions that noncitizens need to fulfill before the intending adoptive parents can qualify to adopt a Ugandan child. These are:

1. The applicant should have attained the age of twenty – five years and be at least twenty-one years older than the child;
2. The applicant should have stayed in Uganda for at least one year;
3. The applicant should have fostered the child for a period not less than one year under the supervision of Probation and Social Welfare Officer;
4. The applicant should have no criminal record;
5. The applicant should have a recommendation concerning their suitability to adopt a child from their country’s Probation and Welfare Office or other competent authority;
6. The applicants should satisfy the court that their country of origin will respect and recognize the adoption order; and
7. The Probation and Social Welfare Officer shall be required to submit a report to assist the court in considering the application.
8. The first condition requires that 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.

Kestin Maria Droll and Benedikt Michael Thomas Droll are 32 and 33 years old respectively. As stated above, the petitioners attached Annexure “A1” as proof of their dates of birth. “A1” indicates that the 1st petitioner was born on 14/1/1988, while the 2nd petitioner was born on

30/3/1987. The children are 5 years and 3 years old, having been born on 20/9/2015 and 19/3/2017 respectively. This implies that the 1st petitioner is 27 and 29 years older than Muwanguzi Jonathan and Karungi Awesome respectively, while the 2nd petitioner is 28 and 30 years older than the said children respectively. The petitioners have thus fulfilled the 1st requirement.

1. Regarding the requirement that the applicant must have stayed in Uganda for at least one year and has fostered the child for at least one year under the supervision of Probation and Social Welfare Officer, the petitioners averred that they lived in Uganda on different dates from: 28/12/2016 to 31/12/2016; 13/8/2017 to 17/8/2017; 20/5/2018 to 28/5/2018; 16/8/2018 to 18/8/2018; 6/1/2019 to 11/1/2019; 24/2/2019 to 28/2/2019; and continuously, from 13/6/2019 as residents of Kawuku village urban council, Ggaba ward, Makindye division in Kampala. Copies of their passport pages with the relevant entries and exit stamps are attached to the affidavits in support of the petition and collectively marked as annexure “B”. Additionally, the LC1 Chairperson of Kawuku village urban council confirmed that the petitioners are residents of his area in annexure “A8” to the petition. The petitioners have fostered the children for more than one year under the supervision of the Probation Officer Makindye.
2. The said Probation Officer, in her affidavit in support of the petition confirmed that she approved the petitioners for fostering and adoption on 30/5/2019. Between 11/1/2019 and 13/8/2019, she conducted assessments on the suitability of the petitioners to foster the children, and found that the petitioners had the right motive and positive values, relevant in the parenting of children as indicated in her completed Form 3 for prospective foster parents, dated 11/1/2019 and annexed as “G1.”
3. She also affirmed that on 13/8/2019, she placed the children under the foster care of the petitioners under her direct supervision; that throughout her constant supervision, she found that a strong family bond or relationship had been established between the petitioners and the children and the same ought to be maintained. She stated that it was on that basis that the petitioners obtained Care Orders in respect of each of the children from the Family and Children Court at Makindye marked as annexures “A47” and “A56” respectively. She also made two reports recommending the petitioners to adopt the children annexed to her affidavit as “G10” and “G11”. From the evidence on record, I find that the petitioners have satisfied the requirement of the law, having fostered the children for more than one year from 13/8/2019 to date, which was done under the supervision of the Probation Officer Makindye.
4. In regard to the condition that the petitioners need to have no a criminal record, both petitioners attached copies of their Criminal Record Clearances from the Federal Republic of Germany dated 24/6/2019, Certificates of Good conduct from Interpol Uganda, dated 23/7/2020 and Uganda Police Clearance Certificates dated 17/7/2020, marked as annexures A15, A16 and A18 and A19, A20 and A22 respectively. This condition of the law has thus been met.

5. As far as the condition that the petitioners provide a recommendation of suitability to adopt a child from their country's Probation and Social Welfare Office or other competent authority, the petitioners presented a number of recommendations from professionals, family and friends in Germany namely:
6. Social Workers (Ms. Huber and Mr. Sofrza, District Administration Office Baden-Baden, Federal Republic of Germany;
7. Youth Welfare Department, Youth Welfare Office of State, Central Adoption Authority, Baden-Wurttemberg, Federal Republic of Germany;
8. Werner Schmall, Headmaster, Vincenti Primary School, Baden-Baden Federal Republic of Germany;
9. George Beier, Deacon at St. Gallus Catholic Parish, Buhi-Altschweier, Federal Republic of Germany;
10. Christen Arndt (Petitioners friend);
11. Dr. Rainer Puttbach, a General Practitioner in Buhl, Federal Republic of Germany;
12. Mr. Joachim Friedrich Huck and Mrs. Anna Elisabeth Huck (Parents of the 1st Petitioner); and
13. Mr. Bruno Oswald Droll and Mrs. Hiltrud Anna Droll (Parents of the 2nd petitioner).
14. The above recommendations are all very impressive and reveal that the petitioners have the support of their family, friends, community and government, and I have taken them into account. However, the recommendation from the Social Workers (Ms. Huber and Mr. Sofrza, of the District Administration Office, Baden-Baden in the Federal Republic of Germany, attached to the petition as annexure "A23", presenting a home study report of the petitioners, and the letter of Heike Sattler of the Youth Welfare Department, Youth Welfare Office of State, Central Adoption Authority ("A24") are more relevant in respect of requirements of Children Act. Their reports collectively highlight capacity of the petitioners as adoptive parents. "A23" focusses on the financial standing of the petitioners, their living situation and environment, profiles and living conditions. The petitioners are therein considered very qualified to adopt a healthy child under the age of three years and to give the child the necessary support. It is stated that the petitioners have proved to be very considerate and open and that the ideas they have about child rearing, give a well reflected impression. Heike Sattler of the Youth Welfare Office of State, Central Adoption Authority, in "A24" confirms inter alia that the petitioners have undergone several interviews and seminars in preparation to adopt. He recommends the petitioners as adoptive parents. I find that the said recommendations fulfill the requirement of the law.
15. As to the condition that the applicants satisfy the court that their country of origin will respect and recognize the adoption order, the petitioners attached a letter dated 24/10/2017, marked as annexure "A59" written by the Legal Aliens Office of the Municipality of Buhl,

confirming that the Federal Republic of Germany will respect and recognize the adoption order. It states: “*We hereby confirm that there are no general objections under the aliens’ law against the immigration, permanent residence and adoption of a child from Uganda by the above family”.*

16. In addition, there are several documents confirming that the adoption of the children will be recognized by the Federal German authorities. Annexures “C9” and “C10” attached to the 1st petitioner’s supplementary affidavit are a declaration agreement of the Association of Local Government bodies for Youth and Social Welfare Matters for the State Baden Württemberg and a declaration of agreement to continuation of the adoption procedure respectively, concerning Muwanguzi Jonathan, addressed to the Probation Officer Makindye and signed by Heike Sattler of the Central Adoption Unit of the State of Baden-Württemberg, in the Federal Republic of Germany. “C11” and “C12” are similar documents to “C9” and “C10” issued by the said Sattler in respect of Karungi Awesome. This evidence clearly demonstrates that an adoption order granted in accordance with our law, will be respected in the Federal Republic of Germany. This condition has also been fulfilled.
17. **Section 47 of the Children Act** provides that the consent of a child’s parents is necessary if the parents are known, but may be dispensed with if the parents are incapable of giving it. The evidence adduced shows that unknown persons found the children abandoned. Attempts to trace the families and relatives of the children through investigations and the use of newspaper notifications in the Bukedde newspapers of Monday 4th July 2016 and Thursday 30th November 2017 respectively, concerning the children Muwanguzi Jonathan and Kirungi Awesome respectively, proved futile. This is a case where the consent of the children’s parents will be dispensed with, because they are incapable of giving consent for the reason that they remain unknown.

Issue No. 3: Whether the application was in the best interest of the child.

1. **Section 3(1) of the Children Act** provides that the welfare principle shall be the paramount consideration when making decisions concerning children.

Section 3(3) further 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.*
7. The children's ascertainable wishes could not be established because of their tender age. The children were abandoned by their own parents. Fortunately, they were rescued and taken to Loving Hearts Babies Home from where the petitioners found them. The children have been under the foster care of the petitioner for more than a year. The Probation Officer Makindye, noted in her progressive quarterly reports ("G2" to "G9") that the petitioners are filled with love, affection and have great emotional ties to the children. I find from those reports that the petitioners have taken charge of the physical, emotional and educational needs of the children. The first petitioner who is a professional primary school teacher of Art and the German language, has been home schooling the children. Jonathan Muwanguzi can now write his name and count. From my interaction with the children in court, I noted that they are free, happy and feel comfortable around the petitioners. These children now have an emotional bond between themselves as siblings and with the petitioners as their parents. It was evident to me that any changes that may lead to their separation from the petitioners or from each other, will negatively affect their well-being. The petitioners have raised the children as their own; they have taught them children their language (German) and a little bit of English.
8. The petitioners are financially stable which is a relevant fact to their ability to look after the children. The petitioners have plans to construct a house for the children at Budhagali village, Ivunamba Parish, Budondo Subcounty, Kagoma County in Jinja District where they have already acquired land. They plan also, to continue teaching and raising the children as Christians, to develop their talents, ensure that they attend an internationally accredited school at the right age, and to cater for all their social, economic, spiritual, mental, emotional and medical needs.
9. Furthermore, it is their evidence on oath that in the event that they (petitioners) return to Germany, they shall continue to provide and protect the children while there and they desire to regularly return to Uganda, so that the children continue to be linked to their roots. According to the 2nd petitioner, he will make a provision for the children to benefit under his Will, in case he dies, in order to guarantee the economic security of the children. Additionally, that in the worst-case scenario that both petitioners become deceased or incapacitated, their parents Hiltrud and Bruno Droll are supportive of the adoption process and will always be guardians to the minors. In my assessment, I find from the totality of the evidence on the record and from my observation of the chemistry between them and the infants during the hearing of the petition, that the petitioners are intentional and passionate about the whole idea of parenting, right from the start of the process. Their love for the children is in my view genuine.
10. **Section 48 of the Children Act** provides inter-alia that the Court should consider if any payment has been made to the applicants as consideration for adoption or if the applicants have made any payments to the child's parents as consideration for the adoption of the

child. The petitioners averred that they have neither received payment as consideration for adoption of the children, neither have they given any consideration to any one, as consideration for adopting the children. I do not find from the circumstances in which the petitioners became foster parents of the children that they were bribed to take care of the children or that they have given a bribe to foster the children.

11. In the circumstances, I am satisfied that the petitioners have complied with the legal requirements to adopt the infants in this case and have additionally demonstrated that the intended adoption is in the best interests of the said children.
12. In the result, this petition is allowed with the following orders:
13. Kerstin Maria Droll and Benedikt Thomas Droll are appointed the adoptive parents of the children Muwanguzi Jonathan and Kirungi Awesome;
14. The petitioners are allowed to change the children's names from Muwanguzi Jonathan and Kirungi Awesome to Jona Baracka Droll and Samu Ekuma Droll;
15. The Registrar General of Births and Deaths is hereby directed to make an entry recording the particulars of this adoption in the Adopted Children's Register and to issue a certificate to Muwanguzi Jonathan and Kirungi Awesome, reflecting the parental relationship established;
16. The Adoption Order shall be furnished to the Consular Department in the Ministry of Foreign Affairs;
17. The Adoption Order shall be furnished to the Permanent Secretary, Ministry of Gender, Labor and Social Development; and
18. Costs of this Petition be borne by the petitioners.

I so order.

Susan Okalany

Judge

26/2/2020

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