

UGANDA / JUDGMENT

Ochaya & Anor v Lamaro (Miscellaneous Civil Application No. 0028 of 2017)

[2018] UGHCFD 5 (17 September 2018)

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COURT

HC: Family Division (Uganda)

BEFORE

Stephen Mubiru, J

CASE / FILE NUMBER

Miscellaneous Civil Application No. 0028 of 2017

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA SITTING AT GULU

MICELLANEOUS CIVIL APPLICATION No. 0028 OF 2017

IN THE MATTER OF AN APPLICATION FOR ADOPTION

BY

1. OCHAYA CHRISTOPHER }
2. SARAH JOAN OCHAYA } APPLICANTS

IN RESPECT OF

LAMARO LILLIE OCHAYA (AN INFANT)

Before: Hon Justice Stephen Mubiru.

RULING

This is an application by which the applicants jointly seek an order of adoption in respect of a child, Lamaro Lillie Ochaya, a female aged nearly four years, having been born on 22nd October, 2014. The applicants are husband and wife, having solemnized their marriage on 15th January, 2011 at Panorama House, Bulli Tops, New South Wales, Australia. They are ordinarily resident in Bar Dege Division Plot 8 Lung Gulu road, in Gulu Municipality, where they have lived for the last five years. The first applicant is a citizen of the Republic of Uganda and a biological maternal uncle of the infant while the second applicant is a citizen of Australia. Both were on 17th October, 2016 appointed by this court as the legal guardians of the infant and have by virtue of a care order issued by the Family and Children Court at Gulu on 9th January, 2015 under Care Application No.

036 of 2014, had legal custody of the infant.

The two applicants have biological children of their own; Zachariah Ronald Ochaya who six year old and Elijah Spencer Ochaya who is four years old. The applicants are the proprietors of a project "Tamarinds" at Nwoya, dealing in commercial farming and business development and are registered as a CBO. Out of their activities, they earn a minimum of shs. 2,000,000/= per month that is sufficient to meet their needs and those of their children. Each has presented a certificate of good conduct from their respective police forces and they have jointly presented a positive report of the Social Welfare and probation Officer of Gulu as to their suitability.

The circumstances of the child, Lamaro Lillie Ochaya are that the identity and whereabouts of his father are unknown. Her mother, Lalam Scovia, died a day after giving birth to the infant and a death certificate to that effect has been presented to court. The infant was named Amari Scovia, randomly by the hospital authorities after her deceased mother. The applicants have since then changed that name to Lamaro Lillie Ochaya and secured her registration with the National Identification and Registration Authority (NIRA) under ref. No. 20160922-024 as per birth certificate No. 20027 dated 22nd September, 2016. The child's grandmother having two other orphans to look after, could not take on the infant and she was thus entrusted to the first applicant as the closest relative willing and able to look after and care for the infant. The two applicants have since then had her in their custody, looked after and cared for her as if she were their own biological child.

Part VII of *The children Act* Cap 59 as amended in 2016 provides for the basic requirements for inter-country adoption. The applicants in are aged 36 and 45 years respectively, while the child is approximately three years and eleven months old. Both of them are over 25 years older than the child. They fulfill the age requirement under section 45 (1) (a) of *The children Act*. Section 14 of *The children (Amendment) Act,* 9 of 2016 amended section 45 (4) by permitting court, in exceptional circumstances, to waive any of the specified requirements.

Under section 56 of the Act, an applicant for adoption in 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 his or her suitability to adopt a child from their country's probation and welfare office or other competent authority and satisfy court that his or her country of origin will respect and recognize the adoption order.

The applicants have been cleared by the respective police forces, which have issued each of them with a Certificate of good conduct. The second applicant has further averred in her affidavit in support of the application that her country will respect the Adoption Order. They have lived together in Uganda for five years now. They have, as the joint legal guardians of the child, fostered her for the required minimum of one year.

The child Lamaro Lillie Ochaya was present in court during the hearing. There is need for stability of the child's life. In some situations, it is in the interest of the child to be adopted by his or her foster parents. In this case, the petitioners have already undertaken responsibility of caring for the child and from observation in court have established a parental bond with the

child. In the submissions of their advocate, they plan to travel to the Australia in the near future and it is important that they commence the processing a visa for the child, since she already has a passport. The paramount consideration in making decisions concerning children is the welfare Principle. Having considered the submissions of Counsel for the applicants as well as the pleadings and other documents in support of the application and having seen and observed the applicants and the child in court, this court is satisfied that all the statutory requirements set by *The Children Act* have been met by the applicants. The court is satisfied that both applicants are fit and proper persons to be appointed as the adoptive parents of the child, Lamaro Lillie Ochaya, given the fact that they have been living and supporting her, she is closely related to them, and they have sufficient means economic and otherwise, to provide for the child and the rest of their other children.

The court is further satisfied, on the evidence availed, that the applicants, granted the adoption order, will ensure the welfare and protection of rights of the child. Not to issue the order applied for will most likely result in placing the child into serious jeopardy as to her welfare. It is In the best interests of the child the application is allowed. Accordingly, the petitioners Ochaya Christopher and Ochaya Sarah Joan are appointed the adoptive parents of the child Lamaro Lillie Ochaya and the relationship of parents is hereby established with all rights and privileges incident thereto. The Registrar General of Births and Deaths is hereby directed to make an entry, recording the particulars of this adoption in the Adopted Children Register and to issue a Certificate to Ochaya Christopher and Ochaya Sarah Joan reflecting the parental relationship established. The Adoption order shall be registered with the office of Registrar General, Ministry of Justice and Constitutional Affairs, and with the Consular Department in the Ministry of Foreign Affairs of the Government of the Republic of Uganda.

Dated at Gulu this 17th day of September, 2018.

Stephen Mubiru,

Judge

17th September, 2018.

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