
UGANDA / JUDGMENT

Washington Amy Elizabeth (Adoption Cause No. 7 of 2021) [2023] UGHCFD 197 (15 February 2023)

[2023] UGHCFD 197

COURT

HC: Family Division (Uganda)

BEFORE

Kitariisibwa-Katunguka, J

CASE / FILE NUMBER

Adoption Cause No. 7 of 2021

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

ADOPTION CAUSE NO. 7 OF 2021 IN THE MATTER OF CHILDREN
(AMENDMENT) ACT 2016

AND

CHILDREN ACT (CAP 59)

IN THE MATTER OF BUYINZA SHALIFU JOSIAH – CHILD

AND

IN THE MATTER OF A PETITION BY WASHINGTON AMY ELIZABETH FOR
APPOINTMENT AS THE ADOPTIVE PARENT OF BUYINZA SHALIFU JOSIAH

Before: Lady Justice Ketrah Kitariisibwa Katunguka.

Ruling

1. Washington Amy Elizabeth petitions this court under article 139 (1), 34 of the Constitution, sections 14, 33, 39 and 47 of the Judicature Act, section 3,4 (1) and (2), 5 and S.46 of Children Amendment Act and Rule 17 of Statutory Instrument No. 59-1; for adoption of Buyinza Shalifu Josiah (herein called the child); for orders that she be allowed to obtain a Ugandan Passport for the child and for costs to be provided for;
2. The Petition is supported by a statutory declaration by the petitioner and briefly that she is a female America citizen aged 33 years;;she has lived in Uganda for eleven years; resident of Bukasa Village, Seta Nyinze Parish, Kangulumira sub county, Kayunga district; having relocated from Bukaya East LC1, Njeru East Parish, Njeru Town Council, Buikwe District where she commenced fostering Buinza Shalifu Josiah; while in the United States she resides at 5671 Hog Mtn Road, Watkinsuille 6A; she is single and has no biological children but an adoptive parent of seven children to wit; Safina Zam (10 years), Sanyu Joy Zam (9 years), Mulungi Patrick (9 years), Kisakye Donna Maureen (8 years), Kigwanala David (4 years), Anyu Christine (12 years) and Malaika Bethany (2 years); she is employed as the Executive Director of Kupendwa Ministries a non-Governmental Organisation incorporated in Uganda;

3. The Petitioner now wishes to be appointed the adoptive parent of Buyinza Shalifu Josiah who has both parents but who are unable to take care of him; she has fostered the child since 28th August 2011 under the supervision of the Probation and Social Welfare Officer Buikwe District; she has not given, received or agreed to be paid a reward as consideration for adopting the child herein, has no criminal record and has never been convicted of child abuse in any country;
4. The Petitioner has been recommended by the Probation Officer, Buikwe district and by the National Alternative Care Panel under the Ministry of Gender, Labour and Social Development, as a suitable adoptive parent; she undertakes to comply with the adoption order issued by this honourable court and that it will be respected and recognised by her home country;
5. The Petitioner has been recommended by the National Alternative Care Panel and Ms. Naigaga Lydia a Probation and Social Welfare Officer attached to Buikwe District; The petition is further supported by affidavits deposed by Naigaga Lydia, Evelyn Namaweje social worker Kupendwa Ministries, Bumba Emmanuel the local Council 1 chairperson Wabiyanja Konko Parish, Wakisi subcounty, Buikwe District, Kyalibona Andrew the maternal uncle to the child, Betty Yogera maternal aunt,, Nakiwafu Benard maternal uncle, Nambegeyo Elizabeth Nasabu maternal grandmother, Sseruma Fred cousin to the child's biological father, Nabwire Mariam paternal aunt,, Oribo Akim paternal uncle, Nandes Esther the biological mother of the child Buyinza Shalifu Josiah, Sande Sulaiman the biological father, Norah Bakulimya aunt to the child's father, Kanyalugano Leonald uncle to the child's biological father;
6. The Petition is also supported by a notarized copy of the relevant page of the Petitioner's passport and birth certificate; copies of the court orders marked "B1-B7", a copy of the LC1 recommendation letter, a copy of a lease agreement, a written explanation of all the Petitioner's travels from 2011-2021 together with the relevant passport pages; copies of recommendation letters from office of the District Internal Security Office;
7. Copies of the recommendation letters from the Resident District Commissioner, Kayunga District, the town Clerk, Kangulumira sub county and Favour Seongsil Church; copies of the employment reference letter and current work permit; a copy of the Foster Application and Certificate; a copy of her education background from the time she received the child to date; a copy of the Petitioner's Financial statements;
8. A statement from a licensed Social worker in Georgia State; a copy of a home study report and welfare report; a confirmation from the Petitioner's lawyer in the USA; copies of recommendation letters from Leah Branon from Mercy Health Center, Jim Stuart senior pastor Prince Avenue baptist Church, Sky Stratt, from Cornerstone, Racheal Lynn Anderson from Athens Regional medical Center, Casey Murphins, a copy of the Certificate of Good Conduct, a Medical Certificate of the Petitioner, copies of written consent from the child's relatives; employment agreement and contract from Kupendwa Ministries, a

recommendation letterf from Kupendwa signed by Babirye Betty; Adoption orders in respect of Sanyu Joy Zam,Mulungi Patrick,Kisakye Donna Maureen, and a ruling in respect of Safina Zam;

9. The child Buyinza Shalifu Josiah was left in the care of his paternal grandparents(Kanyarugano Leonard and Norah Bakulinya) by his biological parents in 2011,because the child was very ill, malnourished and needed assistance, his paternal grandfather sought assistance from the local council 1 chair person who recommended him to Kupendwa Ministries a community based organisation based in Buikwe, jinja and

Kayunga districts where the petitioner is employed as director; she was also the legal guardian of another of Kanyarugano's grandchildren; the petitioner was appointed a foster parent of the child on 28/5/2011 and has been taking care of him since then; the paternal and maternal relatives have consented and so have the biological parents; they appeared in court and confirmed their consent;

Representation:

10. The Petitioner was represented by Counsel Patricia Nyombi who filed written submissions.
11. When this matter came up for hearing on 04/10/2022 the petitioner, her counsel, the child and her biological parents, and grand parents were in court;

Both biological parents and grand parents signed consents and appeared in court and stated that they were unable to look after the child; the implications of adoption were explained to them but they still insisted that they can not look after the child; the child Buyinza who was then 12 years informed court that his biological parents did not love him and did not take care of him while the petitioner whom her referred to as" mummy" did; he does not want to live with his biological parents, he loves the petitioner and he would not care if he never saw the biological parents again; Nandase Esther the biological mother told court that she is not able to look after the child, she is married to another man; that even if they gave her assistance she would not take him; that she knows that adoption is final and she is okay with it;

12. Sande Sulaiman the biological father told court that the child has stayed with the petitioner for so long, got used to her so its too late for him to take the child; that if the petitioner looks after the child better than him it is better he stays with her; even if she was to give him all the facilities to look after the child he would not take him because he is used to her; the probation officer told court that since 2011 they have been pushing for the child's biological parents to take him in vain; that it is in the child's best interests because the biological mother told her that her husband does not want the child; both sets of grand parents are not willing to take the child;

I have considered the pleadings and the evidence adduced together with all recommendations and also the submissions by counsel; the issues for determination are: *i. Whether the Petitioner fulfils the requirements for grant of an adoption order; ii. Whether the grant of an adoption is in the best interest of the child;*

Consideration of issues.

Issue 1. Whether the Petitioner fulfils the requirements for grant of an adoption order; 13.

Section 45(1)(a) of the Children Act (as amended), 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 the age of **twenty five (25) years** and is at least **twenty one (21) years older than the child**; **section 45(3)** provides and I reproduce it here: **"An adoption order shall not be made in favour of a sole male applicant in respect of a female child, or in favour of a sole female applicant in respect of a male child, unless the court is satisfied that"**

"there are special circumstances that justify, as an exceptional measure, the making of an adoption order"

14. **Section 46 of the Children Act** 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; has fostered the child for at least one year under the supervision of a Probation and Social Welfare Officer (PSWO); does not have a criminal record; has a recommendation concerning his/her ability to adopt from his/her country's Probation and Social Welfare Officer or other competent authority;

I shall begin with the general requirements under section 45 of the children Act and depending on the outcome thereof I shall determine the rest;

Age

15. According to her Passport No 5306344889 ,the Petitioner was born in United States of America on 10th October 1986, at the time of this ruling she is 36 years; the child subject of this adoption was, according to his birth certificate, born on the 09/1/2010 he is therefore now 13 years of age; the Petitioner, is above the age of 25 years and 23 years older than the child; the age requirement is fulfilled.

The requirement that only single males can adopt male children;

16. The petitioner is female and not married; the child Buyinza is male; the special circumstances to be considered if waiver of this requirement is to be considered were never pleaded nor proved;
17. The biological parents of the child are alive but for their convenience they could have looked after their child; the mother told court that she handed over the child to his grand parents not because she could not look after him but because the grand parents wanted to perform cultural functions; the father works for Uganda Police, Nambegeyo Elizabeth the maternal

grandmother is self employed selling Motor vehicle spare parts; the maternal uncle Kyalibona Andrew is a community Development officer; Nabwire Mariam runs a restaurant and the other uncles and aunts would provide a wider family within which the child can be raised albeit not physically staying with them;

18. The welfare and the best interests of a child the basis on which decisions concerning children are made pursuant to section 3 of the Children Act, would in my view take into account the entitlement by a child to know and be raised by his parents pursuant to article 34 of the Constitution of Uganda; the position of the law is that adoption should only come as the last resort and especially where it would seek to uproot a child from its culture; unless the welfare of the child is at stake, it should never be considered for the convenience of the parents;
19. Where kind and willing persons, like the petitioner in this case, come up it should be to help until the child becomes an adult to be able to make hi/her decisions. Since the petitioner was willing to take the child as hers and could not love him better than if he was her biological child she may continue looking after him as though he was her own;
20. I am unable to find the female petitioner suitable to adopt a male child; I therefore do not find it useful to consider the rest of the other requirements since, in the best interests of the child, the gender requirement is pivotal;

The petition is dismissed.

The petitioner shall meet the costs of the petition

Ketrah Kitariisibwa Katunguka

Judge.

15/02/2023

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The petitioner, if dissatisfied with the decision of this court, may appeal to the Court of Appeal of Uganda within 14 days of this ruling.

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