

UGANDA / JUDGMENT

Washington Amy Elizabeth (Civil Appeal No. 123 of 2023) [2025] UGCA 131 (12 May 2025) [2025] UGCA 131

COURT

Court of Appeal of Uganda

BEFORE

Asa Mugenyi, JA/ JCC, Musa Ssekaana, JA/JCC,
Stella Alibateese, JA/JCC

CASE / FILE NUMBER

Civil Appeal No. 123 of 2023

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THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

(Coram: Asa Mugenyi, Musa Sekaana, & Stella Alibateese, JJA)

CIVIL APPEAL NO.123 OF 2023

<sup>5</sup> (Arising from High Court Adoption Cause No 07 of 2021)

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

[An appeal from the Ruling of Hon. Lady Justice Ketrach Kilariisibwa Kalunguko (as she then was),
delivered on the 15th February ²⁰²³]

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JUDGMENT OF STELLA ALIBATEESE. JA

20 This appeal was brought against the ruling of Ketrach Kitariisibwa Katunguka J. at the High Court, Family Division, sitting at Kampala, and delivered on the 15th February 2023, dismissing Adoption Cause No. 712021 .

Background:

The child, Buyinza Shalifu Josiah, the subject of the appeal, was born on 9th January, 2009 to Nandese Esther and Sande Sulaiman and both parents are alive. Following the separation of the child's biological parents in 2011, the child was left in the care of his paternal grandparents by his mother and she never refused to pick him. The grandparents were peasants who received no support from the biological parents or relatives for the care of the child and having failed to adequately care for the child, requested the LC I Chairperson of Wabiyinja LC1 Konko Parish, Wakisi Sub-County, Buikwe District for assistance. The LC I Chairperson issued a recommendation letter to Kupundwa Ministries, a community based organization in Buikwe; (and where the Appellant is the Executive Director), to take care of the child owing to his ill health. The Appellant was subsequently appointed as the foster parent of the child on 28th May 2011 and has since then taken care of and fostered the child under the supervision of the Probation and Social Welfare Officer, Buikwe, District. The child is now 15 years old. In 2021, the Appellant petitioned the Family Division of the High Court in Adoption Cause

No.7 of 2021, seeking the following orders;

- a. Order for adoption of Buyinza Shalifu Josiah
- b. Orders that she be allowed to obtain a Ugandan Passport for the child and;
- c. Order for costs to be provided for.

The petition was dismissed on the ground that adoption should never be considered for convenience given that the child had a number of relatives including the parents who had the means to care for the child but had refused and neglected their duty to do so; and that the Appellant being a single female petitioner was not suitable to adopt a male child.

Grounds of Appeal

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The appellant being dissatisfied with the decision of the learned trial Judge, appealed on the following grounds: 25

¹. The learned trial Judge erred in law and fact when she did not consider the welfare principle as the guiding principle in making her decision.

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2. The learned trial Judge erred in law and in fact when she failed to properly evaluate the evidence before her; thus arriving at a wrong decision.

5 Representation

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The appeal was ex-parte and was argued by Counsel Patricia Nyombi and Counsel Leilah Ghalibu for the Appellant. The Appellant and the child were in court.

IO ANALYSIS AND DETERMINATION

Submissions of counsel for the appellant

Ground 1: The learned trial Judge erred in law and fact when she did not consider the welfare principle as the guiding principle in making her decision.

20 Ms. Nyombi submitted that the learned trial Judge erred in law and in fact when she failed to rely on the welfare principle as the guiding principle in making her decision and relied on the gender requirement as pivotal in the making of her decision. She relied on Section 3(1) of the Children Act Cap 59 (as amended) which states that "The welfare of the child shall be of paramount consideration whenever the state, a court, a tribunal, a local authority or any person determines any question in respect to the upbringing of a child." Further she relied on Article 3(1) of the United Nations

Convention on the Rights of the Child which provides that in all actions concerning children, whether undertaken by public or private social welfare

institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. Counsel argued that the welfare principle should be the guiding principle in this appeal.

5 Counsel submitted that the child was abandoned in the care of his grandparents who sought help from the Appellant who had spent 11 years (then) taking care of the child and providing for all his necessities from his infancy as a foster parent. She submitted that the length of time the child had spent under the care of the Appellant had created a parent-child bond. Further, she noted that during the court hearing, the child stated that he had no desire to stay with his biological parents and did not care if he ever saw them again, instead, indicating his preference for the Appellant. 10

Counsel further submitted that the grant of adoption caters for the welfare of the child and would fully legalize the bond between the Appellant and the child and seal her obligations to him. In response to the learned trial Judge's decision that adoption should not be made for the convenience of the biological parents, Counsel submitted that the Probation Officer informed court that all attempts to resettle the child with his biological parents had been 15

- in vain, and both sets of grandparents were not willing to take on the child. Ms. Nyombi, further submitted that for more than 11 years, none of the biological parents and the wider family in issue had agreed to take on the responsibility of looking after the child, even when called upon to do so by the Probation Officer. She reminded the court, that in their testimony before 20
- court and as noted in the ruling of the trial Judge, the biological parents declined to take the child back since they are both living separate lives and 25 consented to the Appellant's petition.

To support her submissions on this issue, Ms. Nyombi, relied on RE M. an Infant, SCCA NO.2211991, where Justice Odoki (S. C) as he then was, held that, " .. in matters relating to children, the guiding principle is that the best

5 interests of the child are paramount " She further relied on Re: Deborah Joyce Alitubeera & Richard Masaba, (Civil Appeal 70 of 2011) 120121 UGCA 4 that quotes Bromley's Family Law, 8th Edition, at page 336, where the author states that:

"...the child's welfare is the court's sole concern and other factors are 10 relevant only to the extent that they can assist the court in ascertaining the best solution for the child... "

She further relied on JVC, (1970) AC 668 where it was held that "The second question of construction is as to the scope and meaning of the words " ...shall regard the welfare of the infant as the first and paramount consideration. "

- 15 Reading these words in their ordinary significance, and relating them to the various classes of proceedings which the section has already mentioned, it seems to me that they must mean more than that the child's welfare is to be treated as the top item in a list of items relevant to the matter in question. I think they connote a process whereby when all relevant facts, relationships,
- 20 claims and wishes of parents, risks, choices and other circumstances are taken into account and weighed, the course to be followed will be that which is most in the interests of the child's welfare as that term has now to be understood. That is the first consideration because it is of first importance and the paramount consideration because it rules upon or determines the course to be
- ²⁵followed." &

She then submitted on the suitability of the Appellant to adopt the child and contended that she meets all the requirements under Section 45(1)(a), Sections 13 and 14, and Section 47(1) of the Children Amendment Act. Lastly, that the Appellant had taken care of the child in issue for 11 years without any 5 support or interference from his biological relatives; who consented to the

adoption and have shown little to no interest in his welfare. That the appellant had provided for all the child's needs competently and has contributed significantly to his welfare and should be appointed as his adoptive parent.

10 Ground 2: The learned trial Judge erred in law and in fact when she failed to properly evaluate the evidence before her; thus arriving at ^a wrong decision

On Ground 2, Counsel submitted that the trial Judge failed to properly evaluate the evidence before her and arrived at a wrong decision' She submitted that in the testimony in court and as included in the ruling by the learned trial Judge, the biological father of the child stated that the child had stayed with the Appellant for so long, gotten used to her and therefore it would be too late for him to take the child back and that he would not do so; even with assistance. That on the other hand, the biological mother of the child told court that she is not able to look after the child since she is married to another man; and that even if she was given assistance, she would not take him. She further submitted that the Probation Officer in her testimony, told court that she had tried to resettle the child with his biological parents in vain since 2011 to 2020

and that the biological mother of the child has another husband who is not willing to take care of the child. Further, in the probation report, the Senior Probation and Welfare Officer stated that "Amy Washington Elizabeth has 25

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loving and committed responses towards raising her children. She is both a very kind and caring person for the children and has carefully considered parenting again. She has strongly bonded with Josiah and wants to adopt him and is excited about the child becoming part of her family. She is financially

- 5 stable, has no criminal record for the ten years she has lived in Uganda and has the necessary resources to provide for the additional child. Her home has no safety hazards, is loving and inviting, therefore she will provide a loving and stable home for the child, BWINZA SHALIFU JOSIAH".
- 10 Ms. Nyombi relied on Page 5 of the Inter- American Commission on Human Rights Organisation of American States' Written responses to questions by Commissioners at Thematic Hearing on Human Rights of Unparented Children and Related International Adoption Policies, that " ... there is no evidence that placement across national, ethnic or racial lines causes any
- 15 harm to children ... there is extensive evidence that denying children ^a permanent nurturing home early in life causes them severe cognitive , socio' emotional and other damage. " She further relied on Re: Deborah Joyce Alitubeera (supra) where page 338 of Bromley's Family Law, 8'h Edition was quoted where the author states that "... In applying the welfare principle

- 20 the court must act in the child's best interests... it should be appreciated that ^a judge is not dealing with what is ideal for the child but simply with what is the best that can be done in the circumstances... "

Counsel prayed that the appeal be allowed and the appellant is granted the orders sought. I have read the record of appeal and written submissions of counsel and have taken them into consideration in determining this matter. 25

Decision

The duty of this court as a first appellate Court is provided vnder Rule 30 (1) of theJudicature (Court of Appeal Rules) Directions, SI 13-10 which states:

- 5 *... (l) On any appeal from a decision of the High Court acting in the exercise of its original jurisdiction, the court may
- a. reappraise the evidence and draw inferences offact; and
- b. in its discretion,for suficient reason, take additional evidence or direct that additional evidence be taken by the trial court or by a comm\sloner...

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Ground I

The appellant averred that the leamed trial Judge erred in law and fact when she did not consider the welfare principle as the guiding principle in making

t5 her decision.

> Section 3(l) of the Children Act Cap 59 (as amended) provides that "The welfare of the child shall be of paramount consideration whenever the state, a court, a tribunal, a local authority or any person determines any question in respect to the upbringing of a child, the administration of a child's property,

20 or the application of any income arising from that administration." Further, Article 3(l) of the United Nations Convention on the Rights of the Child provides that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. 25

At the trial, the leamed trial Judge considered two issues to wit I) Whether the Petitioner fulfils the requirements for the grant ofan adoption order; and 2) Whether the grant of an adoption is in the best interests of the child. From the judgement of the learned trial Judge, I noted that, in determining the matter, the leamed trial Judge pointed out the requirements for grant of an

adoption order as provided under Section 45 and Section 46 of the Children Act Cap 59 (as amended) and proceeded to evaluate whether the Petitioner (Appellant) fulfils the requirements for grant of an adoption order. She determined that the Petitioner fulfilled the age requirement. On the gender requirement the learned trial Judge ruled that "a) 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 b) The biological parents of the child are alive but for their convenience could have looked after their child ... and the other uncles and t0
- aunties would provide a wider family within which the child can be raised albeit not physically staying with them c) The welfare and the best interests of a child on which decisions concerning the children are made pursuant to Section 3 of the Children's Act , would in my view take into account the entitlement by a child to know and be raised by his parents pursuant to Article 15
- 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. d) I am unable to find the petitioner suitable to adopt a male child. I therefore do not find it 20
- useful to consider the rest of the other requirements since, in the best interests of the child, the gender requirement is pivotal" and thereafter dismissed the petition. , & 25

It is evident from her ruling that the learned trial Judge only evaluated the age and gender requirement for the grant of an adoption order and on finding that the Appellant did not fulfill the gender requirement proceeded to dismiss the

- 5 petition which was an error on her part. The learned trial Judge would have benefited from evaluating all the requirements for the grant of an adoption against the evidence adduced by the Appellant and thereafter evaluated whether the grant of the adoption order would be in the best interests of the child in the circumstances before making her decision which was not done. A
- thorough analysis of the evidence before her; beyond the age and gender requirements and a clear evaluation of the evidence against the welfare principle was required and would have demonstrated whether she considered the welfare principle or not. I agree with Counsel's submission that she did not, which was an error. The Learned trial Judge only evaluated part of the 10

evidence before her to reach her decision. From the record of appeal, I see the following as critical evidence that the learned trial Judge should have taken into consideration in deciding whether the adoption order could be granted; t5

a) The Appellant was appointed as the foster parent of the child on the 28th

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- May, 2011 and had taken care of and fostered the child for 11 years (now 14 years) and had bonded with him under supervision by the Probation Officer.
- b) The Senior Probation and Social Welfare Officer's report dated 17th September, 2022 had provided a good character recommendation for the Appellant but also noted that "Buyinza Sharifu Josiah has been under long term foster care by the petitioner under my supervision, re integration with her parents /relatives has failed and since he has been

under foster care for eleven years now and has bonded well with the petitioner, institutionalizing him would affect him and would be detrimental to his welfare as a child."

- c) The relatives of the child including his mother, father, uncles, aunties, grandparents and wider family had abandoned the child from the age of 2 years old and were not willing to take care of the child despite being called to do so by the Probation Officer. This is even so, when the majority are gainfully employed.
- d) That the biological parents and a number of relatives to wit, the paternal grandfather and grandmother, the paternal uncles, the paternal auntie, and the maternal uncle and auntie had consented to the adoption.
- e) The Appellant was already an adoptive parent to a male child, Mulungi Patrick whom she adopted in 2015 vide Adoption Cause No 163 of 2015, High Court of Uganda, Family Division.
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f) Having lived in Uganda for 10 years, the Appellant had no criminal record.

I believe the evidence on record demonstrates/shows sufficient circumstances for the grant of an adoption order to the Appellant to ensure the welfare of the child.

I also take cognizance of the much quoted work from the Inter- American Commission on Human Rights Organization of American States' Written Response to questions by Commissioners at Thematic Hearing On Human Rights of Unparented Children and Related International

Adoption Policies which states at page 5 that "...there is no evidence that placement across national, ethnic or racial lines causes any harm to children ...there is extensive evidence that denying children a permanent nurturing 25

home early in life causes them severe cognitive, socio-emotional and other damage".

- 5 I had the opportunity to observe the child for a while when he was in court with the Appellant and he appeared to be very comfortable and happy. His responses to the questions that the panel raised also showed that he is ^a confident and well-adjusted young man at 15 years of age. I therefore see no reason why he should be deprived of the possibility of having a loving mother in his life. Especially one that has chosen him. I believe it is better for the child
- to be placed in a loving family setting where he is accepted and loved rather than institutionalizing him especially considering the refusal by his relatives from both the maternal and paternal side to take care of him. I therefore, hold the view that given the circumstances of this case, it's in the best interests of the child that the adoption order is granted. Ground I succeeds. 10

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Ground 2:

The appellant contended that the learned trial Judge erred in law and in fact when she failed to properly evaluate the evidence before her; thus arriving at a wrong decision.

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I have read Ground 2 of the appeal. The appellant does not state which evidence she is challenging. The said ground does not comply with Rule 86(1) of the Judicature (Court of Appeal Rules) Directions which reads:

"86. Contents of memorandum of appeal

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- 1) A memorandum of appeal shall set forth concisely and under distinct heads, without argument or narrative, the grounds of objection to the decision appealed against, specifying the points

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which are alleged to have been wrongfully decided, and the nature of the order which it is proposed to ask the Court to make..."

In *Ranchobhai Shivabhai Patel Ltd and Anor v Henry Wambuga & anor*, CA 06 of 2017, a similar ground was found to be

> "...too general and does not specify in what way and in which specific areas the learned Justices of appeal failed to evaluate the evidence. It does not set out the particular wrong decision arrived at by the learned justices of appeal..."

Since ground 2 of the appeal does not comply with the Court of Appeal Rules it is struck off. 10

This appeal on the whole succeeds irrespective of striking ground 2. I therefore set aside the decision and orders of the High Court with the

- following orders: t5
- 1. The Appellant AMY ELIZABETH WASHINGTON is appointed as the adoptive parent of the child BUYINZA SHALIFU JOSIAH.
- 2. The Appellant is permitted to obtain a Ugandan passport for the child.
- 3. Costs of the appeal shall be borne by the Appellant.
- Dated at Kampala this. .2.5ay or. [[.?.Iozs.

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Stella Alibateese JUSTICE OF APPEAL

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

⁵ CM L APPEAL NO: 123 OF 2023 ARISING OUT OF ADOPTION CAUSE NO:7 OF 2021 IN THE MATTER OF BUYINZA SHALIFU JOSIAH AND IN THE MATTER OF A PETITION BY WASHINGTON AMY ELIZABETH (APPELLANT) FOR APPOINTMENT AS ADOPTIVE PARENT OF BUYINZA SHALIFU JOSIAH 10

15 JUDGEMENT OF SSEKAANA MUSA. JA

I have had the benefit of reading the lead Judgment of Her Lordship Hon. Lady Justice Stella Alibateese and I concur with the same.

Dated at Kampala this. . . . 1 . 2 E.. day of .2025.

25 SSEKAA NA MUSA JUSTICE OF APPEAL

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

(Coram: Asa Mugengi, Musa Sekaana, & Stella Alibateese, JJ) CIVIL APPEAL NO. 123 OF 2023

(Arising from High Court Adoption Cause No 07 of 2021)

IN THE MATTER OF A PETITION BY WASHINGTON AMY ELIZABETH FOR
APPOINTMENT AS THE ADOPTIVE PARENT OF IN THE MATTER OF BUYINZA
SHALIF JOSINI AND

BUYINZA SHALIF JOSIAH

JUDGMENT OF JUSTICE DR. ASA MUGENYI. JA

I have had the advantage of reading in draft the judgement prepared by my learned sister, Justice Stella Alibateese, JA. I agree with the reasoning and orders proposed.

Dated at Kampala this 12th day of May 2025

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Dr. Asa Mugenyi JUSTICE OF APPEAL

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