

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA**  
**(FAMILY DIVISION)**  
**ADOPTION CAUSE NO. 0017 OF 2023**  
**IN THE MATTER OF THE CHILDREN ACT, CAP. 59(AS AMENDED)**  
**AND**  
**IN THE MATTER OF A PETITION FOR THE ADOPTION**  
**OF**  
**OLIVEIRA CHARLES TAYLOR**  
**BY**  
**RODRIGUES DE OLIVEIRA SÉRGIO LICURGO**

**Before: Ketrach Kitariisibwa Katunguka;(Judge)**

**Ruling.**

**Introduction:**

1. **Rodrigues De Oliveira Sérgio Licurgo** ('the petitioner' herein); through his counsel Kakande Edward of **M/S F. Aogon & Co Advocates** brings this petition for adoption of **Oliveira Charles Taylor** (herein called "**the child**"); and prays that; an adoption order of the child be made under the Children Act as amended



Cap. 59 with all the necessary directions, costs of the petition be provided by the petitioner and further orders be made as the nature of the case may require.

### **Background.**

#### **The Petitioner.**

2. According to the petition and the affidavits in support, the petitioner: is a citizen of Portugal, holder of passport number **CB966778**, born on 31<sup>st</sup> March 1978, hence aged 45 years and is married to **Saidia Shamim Perry Oliveira** the biological mother of the child; is currently a resident of Roze Courts situated at Baskerville Village, Kololo 1 Parish, central urban council in Kampala District Uganda; is employed as a Finance and Administration Director at **Mota-Engil (U) Ltd** In Uganda; has no criminal record in Uganda, Portugal or any other country; has not received or agreed to receive any payment in consideration to the adoption of this child; is related to the child by virtue of being married to the child's biological mother.
  
3. On 30<sup>th</sup> March 2023, the petitioner formerly expressed his intention to adopt the child through Mr. Lwanga Mayanja, the Probation and Social Welfare officer, KCCA Makindye division; the probation officer conducted a pre-adoption assessment and found the petitioner suitable to adopt the child and recommended the petitioner to foster the child on 15<sup>th</sup> March 2021 and has had an opportunity to witness them bond; the petitioner has been supporting the child with school fees and all other basic needs; he is medically fit and of sound mind.



4. The adoption order if granted will be respected and recognized by the government of Portugal; that this petition is in the best interest of the child; and both the biological mother and father of the child have consented.
5. The petition is supported by the following documents: the petitioner's passport with visas; tenancy agreement, employment appointment letter, national identification cards of the biological parents, the marriage certificate, employment renewal contract, employment contract, copy of certificate of good conduct, copy of the birth certificate of the child, a report from the probation and social welfare officer, consent of both the biological parents, school fees invoice and receipts and a medical report.

**The child:**

6. The child Oliveira Charles Taylor, according to the birth certificate is male born on 18<sup>th</sup> February 2011, his biological parents are **Kawooya Sindani John** and **Saidia Shamim Perry Oliveira** both Ugandan citizens; his biological father abandoned him since the age of 4 and has not been in the child's life since then; the child is in the custody of the mother and the petitioner, he has not been subject of any adoption order or application or petition for adoption order in any court of law in Uganda or else were. The petitioner has been rendering parental responsibility to the child; they have a strong bond, and he gave him his surname, 'Oliveira'.

**Issues:**

7. Counsel for the petitioner framed the following issues for courts determination:
  1. Whether the petitioner qualifies to be appointed the adoptive parent of the child Oliveira Charles Taylor

2. Whether this application /petition is in the best interest of the child?

3. Whether this honorable court is vested with the jurisdiction and discretion to grant the orders sought?

### **The case**

8. The petitioner is a Portuguese citizen married to the child's mother who is Ugandan. He works and lives in Uganda; the child lives with the petitioner and his mother; the petitioner meets all the child's needs; the father to the child has consented to the petition.

### **Consideration:**

I shall determine issue No.3 first, followed by No.1 and lastly No.2 in that order.

Issue No.1: **Whether this court has jurisdiction to entertain this petition?**

9. **Section 44(1) b of the Children Act cap. 59** 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. According to the facts, the petitioner is citizen of Portugal holder of passport **No. CB966778**; therefore, this court has jurisdiction to determine the matter.

Issue No.2: **Whether the petitioner qualifies to be appointed the adoptive parent of the child Oliveira Charles Taylor?**

10. Adoption is defined by Black's Law Dictionary 11<sup>th</sup> Edition, as; ***'The creation by judicial order of a parent-child relationship between two parties who usually are unrelated; the relation of parent and child created by law between persons who are not in fact parent and child'***. This definition was stated by court in **Re Edison Mugaga AD No.15/2019**; the relationship so

created must not be of a kind which flippantly can be disbanded because the natural relationship between a parent and a child is for life; according to Black's Law Dictionary(supra), "**Adoption is permanent**" although the parental obligations may change when the child turns 18 years; (see **section 2 of the Children Act cap 59** which defines a child as a person under the age of 18 years).

11. **Section 45(1)(a) of the Children Act**, 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 46** 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; 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; and has satisfied the court that his/her country of origin will respect and recognize the adoption order; **Section 47** provides that the consent of the parents if known shall be sought.

I shall proceed to determine if each requirement has been fulfilled.

***The age requirement.***

12. The facts of the case show that the petitioner was, according to his Passport No CB966778, born in 1978, making him 45 years, the child's birth certificate shows he was born in 2011 making him 12 years, the petitioner is



hence above 25 years and 23 years older than the child, thereby fulfilling the age requirement.

***Period of stay in Uganda.***

13. The petitioner relied on a Uganda Certificate of Residence issued on 24/08/2021 valid until 17/09/2026 under ID No.243808433; the petitioner together with the child's mother on 11/08/2017 solemnized their civil marriage in Uganda before the Chief Administrative Officer of Arua as indicated in the Marriage certificate; by implication, the petitioner has been residing in Uganda for more than 12 months. The 12 months' stay in Uganda has been satisfied.

***Foster Period.***

14. **Section 1(i) of the Children' Act** defines foster care placement as the placement of the child with person who's not his or her parent or relative and who's willing to undertake the care and maintenance of the child, this must be for a period not less than 12 months. The report of the social welfare and Probation Officer shows that the petitioner has fostered the child since 15<sup>th</sup> March 2021, however he has been looking after the child since 11<sup>th</sup> August 2017; besides being the husband to the child's biological mother, by implication, he has had custody of the child since after the marriage in 2017; he is a relative, and the law does not require him to foster the child.

***Proof of No criminal record.***

15. On court record is the petitioner's certificate of good conduct issued on 20th July 2023 by the Uganda Police Force under the Directorate of Interpol



and International Relations which confirms that he has never been convicted of any criminal offence; therefore, this requirement is complied with.

***Consent of Parents:***

16. The child's biological parents appeared in court; Kawooya Sindani John the biological father signed a consent form, he testified in court that he has not been involved in the child's life since 4 years; he separated from the child's biological mother and he is cohabiting with another woman who was not kind to the child; currently he has no direct control over the child; he believes that it is for the child's wellbeing that he is adopted. Saidia Shamim Perry the biological mother also signed a consent form; they presented copies of their national IDs NIN No. **CM7509910240YC** for the father and NIN No. **CF91002104CKTL** for the mother. I find the legal requirement has been satisfied.

***Financial Capacity:***

17. It is important that a prospective adoptive parent be able to adequately provide for the new child. According to the petitioner's appointment letter as a Finance Administrator Director at Mota-Engil Engenharia E Construcao Africa Uganda dated March 1<sup>st</sup>, 2021, contract of employment has been renewed from 1/3/2023 to 28/2/2024; he earns a gross monthly salary of Uganda shillings 13,122,740/=; he has also been providing for the child with all necessities including education attached to the file are copies of the invoice and receipts. I find that he has financial capacity to take care of the child.

***Recommendation of the petitioner's country's probation and social welfare officer and confirmation that they shall recognize the order of this court.***

18. There is no evidence of a recommendation of a probation officer from Portugal; the petitioner in his petition deposes that there are special circumstances that justify an exception in granting this adoption; **section 46(4) of the Children Act**, provides that the requirements under **subsection 1** maybe waived under exceptional circumstances; the facts at hand are that the petitioner is married to the biological mother of the child; he has been taking care of the child since 2017 and has been providing all the necessities to the child including school fees;( evidence of payment of school fees is on record);.

The report of the Probation and Social Welfare Officer of Kampala Capital City Authority shows that the petitioner as the step father to the child has established a strong bond with him and he is committed to continue upholding his parental responsibility; that he is a fit and suitable prospective adoptive parent and that it is within the best interests of the child ; the probation officer has watched the petitioner with the child for at least 12 months, and the petitioner lives with the child's biological mother who is deemed to be his natural guardian and caretaker; The petitioner is employed and lives in this country; his home country cannot give a comprehensive report on his suitability to adopt, better than the probation officer of the area where the child and the petitioner have lived for at least 12 months; I shall therefore waive the requirement of the recommendation of the petitioner's country's probation and social welfare officer. (see the consideration also in **RE; Hassan Kaaya (Family Cause No. 002' of 2018)**);



***Recommendation from the Alternative Care Panel:***

19. **The High Court Administrative Circular No. 2 of 2020; Circular Instruction No.2(5);** requires court to take into consideration the report of the Alternative Care Panel before granting any adoption order where the petitioner is non- Ugandan. The Alternative Care Panel minutes of meeting held on 30<sup>th</sup> and 31<sup>st</sup> March 2023, show that the petitioner appeared before the panel; and was recommended to adopt the child.

As a result, the petitioner has been found suitable and qualified to be an adoptive parent of the child.

Issue number one is answered in affirmative.

Issue No. 3: **Whether the petition is in the best interest of the child?**

20. **Section 3 of the Children Act and section 3(1)** 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, administration of a child's property; the same spirit is found in **article 3(1) of the United Nations Convention on the Rights of a Child;**

21. Section 48 of the Children Act stipulates that the court in making the adoption order must be satisfied that it is in the best interest and welfare of the child giving consideration of the child's age and understanding. The above principle has been fortified by courts up to the highest court of the land; (see the case of **Mark Siduda Trevor (an infant) Family Cause No. 213 of 2014,** the case of **Deborah Joyce Alitubeera Civil Appeal No. 70 of 2011 and In Re M an infant SCCA No. 22/2004)**



22. In determining the welfare principle, **section 3(3) of the Children Act** as amended requires court or any other person to highly put into consideration; the ascertainable wishes and feelings of the child considering his/her age and understanding, the Child's physical, emotional and educational needs, the likely effects of any change in the child's circumstances, the child's sex, and any other circumstances relevant in the matter, any harm that the child has suffered or is at risk of suffering and 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.

23. The child subject of this petition is aged 12 years, his mother is married to the petitioner as per the marriage certificate; he has been under the custody and care of the petitioner and his mother; the petitioner has been meeting all the needs of the child; he is committed and willing to continue; The report of the probations officer states that there is no one else willing to care for the child except the petitioner who has since taken over the parental responsibility. The petitioner has other children together with the mother of the child; in a bid to make him feel part of the family and at home he took the step to adopt the child legally.

24. The biological father of the child, on the other hand, abandoned him since he was 4 years; he is cohabiting with another woman who according to him may not be willing to take on the child; evidence shows that the child was given the petitioners' surname of **Oliveira** showing the bond between the child and the petitioner and an attempt to make the child feel part of the petitioner's

family with the child's biological mother. At 12 years the child knows his father but he does not live with him; it appears to me that even if this petition is not granted the child would continue to live under unique circumstances that would appear to isolate him- living with a mother and half siblings and a step - father, and away from his biological father whom he last lived with when he was 4 years of age; the circumstances in my view would not be in his best interests.

25. Having stated as above however, court interacted with the child in camera; at 12 years of age even if the biological father does not stay with him and does not provide for him the child's right to know his father under article 34 of the Constitution must be protected; the child therefore has the right to see / and or communicate with his biological father whenever he wishes and the petitioner shall not hinder him.

26. The opportunity offered by this petition in my considered opinion is to allow the child to live in a home where there is stability and permanence. In the premises I find the petition to be in the best interests of the child.

The petition has merit and is hereby granted with the following orders.

1) Rodrigues De Oliveira Sérgio Licurgo is hereby appointed the adoptive parent of **Oliveira Charles Taylor**

2) The child **Oliveira Charles Taylor** is hereby declared the adopted child of Rodrigues De Oliveira Sérgio Licurgo and the relationship of parent and child is hereby established with all rights and privileges incident therefore including the right of inheritance



- 3) 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 Rodrigues De Oliveira Sérgio Licurgo reflecting the parental relationship hereby established.
- 4) The Petitioner **Rodrigues De Oliveira Sérgio Licurgo** and **Saida Shamim Perry Oliveira** shall have care, custody and control of **Oliveira Charles Taylor** and shall be responsible for his education, maintenance, protection and support; provided that the child, if he wishes, shall have the right and shall be facilitated by the petitioner to see and or communicate with his biological father.
- 5) The adoption order shall be furnished to the consular department of the ministry of foreign affairs.
- 6) The costs of this petition shall be borne by the petitioner.



Ketrah Kitariisibwa Katunguka.

Judge.

10/10/2023.

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