

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
FAMILY DIVISION
ADOPTION CAUSE NO. 0009 OF 2023

IN THE MATTER OF THE CHILDREN’S ACT CAP 59 (AS AMENDED)
AND
IN THE MATTER OF MISS SKYLAR ANDREA DONIK (A MINOR) OF
KISASI NDUNDU KAMPALA

IN THE MATTER OF AN APPLICATION BY PROFESSOR FRED
MUMBERE WALEMBA (ADOPTIVE PARENT) FOR AN ADOPTION
ORDER

Before: Lady Justice Ketrach Kitariisibwa Katunguka.

Ruling.

Introduction;

1. Professor Fred Mumbere Walemba (herein called ‘the Petitioner’ petitions this court for an order for adoption of Skylar Andrea Donik(herein called ‘the child’); to be made under the children Act with all necessary directions and for such further or other orders as the nature of the case may require.
2. The grounds of the Petition are in the Petition and the affidavits in support deposed by the petitioner and a one Nakakembo Diana the biological mother of the child Skylar Andrea Donik; and briefly that :the petitioner is a 50 year old single male British citizen of Mayfair: London Road-Six Mile Bottom -CB8-0UJ and 145 -- High Street Harston Cambridge, Cambridge shire: CB 227 QD;he is engaged to the said Nakakembo Diana holder of Ugandan passport NOA00229291; the petitioner since 2014 has provided Skylar Andrea DONIK with all the necessities of life.

3. The petitioner wants Nakakembo Diana & Skylar Andrea Donik to move to the United Kingdom where he can live together with them as a family and give them better opportunities in life, and seeks to adopt Skylar Andrea Donik because he loves her as his own, to make his soon to be family complete so that Skylar Andrea Donik can inter-alia inherit from his estate with ease when he has gone to meet the lord; to make her a British citizen so that she can access all the benefits that come with such a status: - for instance, Skylar Andrea Donik being of tender years can totally adopt to life of an English girl, (e.g. the mannerism, accents, schools and all the benefits that come with such an education world over) and she can also access cheaper colleges/Universities scholarships, tuition, student loans among other things;
4. The Petitioner is engaged in gainful employment in the United Kingdom; he has no blood relation to the child, does not have any criminal record in the United Kingdom or anywhere else in the world, the adoption order when granted will be respected in the United Kingdom; he knows that the child is of the female sex, still a minor aged 8(eight years) born on the 4th day of April 2013 and she is living with his Fiancée the biological mother Nakakembo Diana; he has it on good authority that Skylar Andrea Donik's biological father abandoned her mother as soon as he got to know that she was pregnant and to this very day his whereabouts are not known. It is therefore impossible to obtain his say on this adoption;
5. The petitioner knows that the child's biological mother consents to this adoption and so does the child herself; the child has not been the subject of any previous adoption proceedings, order arising therefrom; he knows that because of the age of the child and his intended marriage with her biological mother, there is an urgent need for this adoption application to be heard and granted immediately; this is a proper situation in which the court should waive some of the requirements in the Children's Act as doing so would serve the best interests of the child, court should also waive the consent of the child's biological father as he's incapable of giving it;
6. The petitioner has not received or agreed to receive and no person has made or given him any payment or reward in consideration for the adoption of the child subject of this petition and the same applies to his Fiancé Nakakembo Diana; that an adoption order made by this honorable court will be recognized by the government of the United Kingdom and he shall meet the costs of this petition

7. The Petition is also supported by the petitioner's passports NO-GBR 548357711 and Nakakembo Diana's Passport No. A00229291, a photocopy of the birth certificate of Skylar Andrea Doniks, the Petitioner's Bank statements, recognition of an overseas adoption, proof of good conduct from United Kingdom, a consent from Nakakembo Diana.

Representation.

8. The Petitioner is represented by Counsel Eric Kyasiima Byarugaba who was ordered to file written submissions by 21/08/2023, and the ruling was to be delivered by email by 21/10/2023; by the time of preparing this ruling there were no submissions on record; I have considered the pleadings and evidence on record.

The case.

9. The Petitioner is a British citizen who is gainfully employed; he is engaged to the mother of the child subject of this petition; the child is female and living with her biological mother; the petitioner provides for the child; the child's father abandoned the mother when she was expecting the child so his consent cannot be secured; the petitioner wishes to adopt the child and together with the child's mother- his fiancé , have them live with him in the United Kingdom where he lives; he seeks for waiver of requirements under the Children Act because the petition needs to be heard expeditiously in the interest of the child.
10. The issues for determination are : 1. Whether the petitioner qualifies to adopt the child subject of this petition; 2. Whether the petition is in the best interests of the child; I shall go ahead and determine the petition.

Issue No. 1. *Whether the petitioner qualifies to adopt the child subject of this petition.*

The Law.

11. **Section 45(1)** of the **Children Act Cap. 59**; 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 joint applicants has attained the age of twenty-five years and is at least twenty- one years older than the child; while section **45(3)** provides that 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.

12. **Section 45(4)** provides that the application shall not be considered unless the applicant has fostered the child for a period of not less than twelve months under the supervision of a probation and social welfare officer; section 45(5) provides that the probation and social welfare officer shall be required to submit a report to assist the court in considering the application; and the court may, in addition, require some other person or the local authority to make a report in respect of the adoption application.
13. Section 46. (1) provides; ‘A person who is not a citizen of Uganda may in exceptional circumstances adopt a Ugandan child, if he or she— (a) has stayed in Uganda for at least twelve months ;(b) has fostered the child for at least twelve months under the supervision of a probation and social welfare officer; (c) does not have a criminal record; (d) has a recommendation concerning his or her suitability to adopt a child from his or her country’s probation and welfare office or other competent authority; and (e) has satisfied the court that his or her country of origin will respect and recognise the adoption order.
14. (2) For the purposes of an application to which this section applies, the probation and social welfare officer referred to in subsection (1)(b) shall be required to submit a report to assist the court in considering the application; and the court may, in addition, require some other person or authority to make a report in respect of the application.’
15. The best interest of the child is the fundamental principle and central in determining any proceedings in respect to children; **Article 3(1) of the United Nations Convention on the Rights of a 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. In the like manner, **section 3(1) of the Children Act**; 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, or the application of any income arising from that administration.”; In determining the welfare principle; section 3(3) of the Children Act as amended mandates court or any other person to have regard to: (a) the ascertainable wishes and feelings of the child concerned, with due regard to his or her age and understanding; (b) the child’s physical, emotional and educational needs; (c) the likely effects of any change in the child’s circumstances; (d) the child’s sex, age, background and any other circumstances relevant in the matter; (e) any harm that the child has suffered or is at the risk of

suffering; and (f) 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. The welfare principle has over the years been restated and enunciated by courts; (see: **Joyce Deborah Alitubeera CACA No.70 of 2011** and **Richard Masaba CA No. 70 & 81 of 2011**) and a host of others since then.

Analysis

16. I have considered the evidence adduced; the petitioner while he is 21 years older than the child(he is 50 years of age while the child is 8 years); he is male and the child is female; he was born in Uganda but he is a British citizen; he has not proved that he has dual citizenship therefore the petition shall be considered as for a non-Ugandan citizen; there is no proof that the petitioner has fostered the child for at least 12 months; he has not presented a report of the Probation and Social welfare officer both for here in Uganda or for the United Kingdom, and yet the child's best interests in petitions of this nature are supported by what the probation officer has watched/observed and reported to court; there is no justification for any petition for adoption to be presented without the report of the Probation officer of the area where the child resides and court cannot waive such a requirement.
17. The petitioner is single and male; the fact of being engaged to the child's mother seems to be presented as justification for court to grant the petition; the petitioner has not even proved that he lives with the child's mother - even if court could consider that as a reason, which court can not do, for engagement is a promise to marry so it is not marriage to qualify the petitioner to be considered a relative to the child; the welfare of the child can not be determined based on a prospective relationship between the child's mother and the petitioner; one wonders where the relationship does not work out! Exceptional circumstances are those where the child cannot be catered for by anyone else and her life is at risk, except if the petition is granted.
18. 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 a non-Ugandan; no such report was presented.
19. Courts have considered certain exceptional circumstances and allowed female petitioners who had fostered the male children who had been found abandoned and picked and kept in an orphanage until the petitioner offered to

foster them;(see **Adoption Cause No.31 of 2021; in the Matter of Christopher Kamy (child) ; and Adoption Cause No.18 of 2018 in the Matter of of Kyakutwika Patrick and Muyaya Jackson, High Court of Uganda at Jinja;**) See also this court's decision In **In The Matter Of Kisakye Moses Suubi (Child) and In The Matter of The Petition For Adoption of The Child By Anna Maria Trzcińsk Adoption Cause No.58 Of 2022;**

20. In the cases cited the Probation and Social Welfare officer's report was relied upon unlike in this petition; and the report of the National Alternative Care Panel was considered in the later. In the petition at hand the child's mother is alive and young; the petitioner is willing to provide for her and so can continue; the justification for the adoption in my view appears to be luxurious other than that the child's welfare is at risk. The petitioner being male and single does not qualify to be considered as possible adoptive parent of the child for to allow the petition would not be in the interests of the child.
21. Having determined issue 1 hinged on the welfare of the child as I have, I have not found reason to consider the issue as to whether the petition is in the best interests of the child because the suitability of the petitioner is hinged on the safety and needs of the child in the first place.

The Petition has no merit, and it is hereby dismissed.



Ketrach Kitariisibwa Katunguka.

Judge

4/10/2023

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