

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

FAMILY CAUSE NO. 56 OF 2009

**IN THE MATTER OF ADUR TANIEL RALIHA (7 YEARS) AND REISEN AWOR CAGE
(10 YEARS)**

AND

**IN THE MATTER OF AN APPLICATION FOR ADOPTION OF ADUR TANIEL
RALIHA AND AWOR CAGE BY JADE AMOLI JACKSON THROUGH HER
ATTORNEY KASANGO DANIEL**

BEFORE: HON. LADY JUSTICE MARGARET C. OGULI OUMO

RULING:

The Petitioner, an adult British citizen (as evidenced by her passport attached as Annexure “A”), of Ugandan origin, resident in the United Kingdom on Plot 7A, Harbut Road London, SW112 RA UK –brings this petition under Article 139(1) of the Constitution of Uganda, Sections 14, 33 and 39 of the Judicature Act, Cap 13, and Sections 44, 45 and 46 of the Children Act Cap 59, in which she is seeking for orders that:-

1. That she be appointed the adoptive parent of the above children.
2. That the petitioner be allowed to re-unite with the children in the United Kingdom.

The petition is supported by the affidavit of the petitioner dated the 15th May, 2009.

At the hearing of the petition, the petitioner was represented by Mr. Charles Majoli.

The law with regard to adoption is contained in sections 44, 45, 46 47 and 51 of the Children Act.

Section 44(1) (b) grants jurisdiction to this court to hear an application for Adoption where the child or the applicant is not a citizen of Uganda.

We shall first look at the requirements and conditions for adoption to see whether the applicant fulfils them.

The applicant is a British citizen but of Uganda origin.

Under section 45(1) of the Children Act, inter alia, an adoption order is granted to a sole applicant where-

- a) The applicant has attained the age of twenty five years and is at least twenty one years older the child.

In the instant case, the petitioner is sixty one years old, having been born on 2nd August, 1948. See a copy of her passport on the court file. The children, Adur Taniel Raliha was born on 4th June, 2001 and Awor Cage on 21st August, 1998, they are therefore eight and eleven years old respectively – (see their Birth Certificates on the court file, Annexed as C and B respectively.)

The petitioner therefore fulfils the requirement as to age in the Children Act since she is fifty three and fifty years older than the children.

Under Section 45(2) an adoption petition should not be made in favour of a sole male applicant in respect of a female child or sole female applicant in respect of a male child unless the court is satisfied that there are special circumstances to justify, as an exceptional measure, the making of an adoption order.

In the instant case, the children are girls and the applicant is female. She therefore qualifies to adopt the children since she is of the same sex with them. The Probation and Social Welfare Officer has supervised the petitioner and his report is in the file.

In addition, S.45 (4) of the children Act provides that an application for adoption shall not be considered unless the applicant has fostered the child for not less than thirty six months under the supervision of a Probation and Social welfare Officer.

Counsel submitted that the petitioner is the maternal aunt of the children, she being the sole surviving sister of their mother, Sophia Godongo who died on 4/6/2001 – see copy of her Death Certificate on the court file.

The children's father John Lubega died in 1991. His Death Certificate is on the court file.

Counsel submitted that the applicant has been supporting the children since 2001 to date. That she purchased a house in Nalya, Kampala for them where they are now residing. That she has been paying for their school fees at St. Theresa Nalya Primary School and Hill Side Nalya Primary School, in Primary two and seven. Mr. Majoli contended that the children have no other relative apart from the petitioner who wishes to be re-united with them in order to continue with the support she has been providing.

Mr. Majoli argued that, under paragraph 8 of the applicant's affidavit, Philda Ogenga, the grandmother of the children who was living with them passed away and they are now being taken care of by a maid who may leave the home, thus leaving the children with no care.

That the Probation and Social welfare Officer visited the home where the children are residing and recommended that the petitioner be re-united with the children to continue with the provision of education and a home because she is the close relative of the girls.

In view of the above, court is satisfied that the applicant has been fostering the children, providing them a home, education and maintenance and the Probation and Social Welfare Officer has supervised the children under her care through an attorney one Kasango Daniel.

The Probation and Social Welfare Officer observed that the children need emotional and psychological support after what they went through when they lost their parents and were abducted by rebels in Northern Uganda and as a consequence lack proper health, love and protection. He recommended that the children be reunited with the aunt so that he can provide for their welfare, medical, physical and emotional needs and that it is in the best interests of the children that they be reunited with the applicant who will be able to cater for them in a secure environment where they can be treated as children.

In view of the above, court is of the view that even if the petitioner had not fostered the children physically, she has fostered them informally and their present condition demands that they be with someone who can provide them with a home, physical and emotional support and the applicant, their maternal aunt is in the best position to provide it in compliance with section 3 and Paragraph 1(b) of the First Schedule to the Children Act, as they are children in need of care and protection.

The applicant is a British citizen according to her passport on the court file.

We shall therefore examine whether she fulfills the conditions for Inter-country adoption under section 46 of the Children Act.

Under section 46, a person who is not a citizen of Uganda, may in exceptional circumstances adopt a Ugandan child if he or she is-

- a) has stayed in Uganda for atleast three years
- b) has fostered the child for atleast thirty six months
- c) does not have a criminal record
- d) has a recommendation concerning his or her suitability to adopt from his or her country's Probation and Social Welfare Officer, or other competent authority and;
- e) has satisfied court that his or her country of origin will respect and recognize the adoption order.

In the present case, the applicant who was born in 1948 left Uganda in 2001, when she was 53 years old. She had lived in Uganda for 53 years and therefore fulfills the conditions in section 46(1) of the Children Act.

The applicant who is the maternal aunt of the children has fostered them informally for over five years, by providing them with a home, education, health care and maintenance, although not living with them. She has thus fulfilled the condition as to fostering.

The applicant has no criminal record. See her criminal clearance on the court file.

Counsel submitted that the applicants' country will recognize the order.

In view of the above, court is of the view that the applicant has satisfied the conditions of the law with regard to Inter-country adoption.

Section 47 of the Children Act, provides interalia that the consent of the parents if known is necessary for the adoption order to be granted. In the present case, the parents of the children are dead as confirmed by their Death Certificates on the court file. So no consent is necessary.

Consequently, the application is allowed in the following terms and conditions;

1. The petitioner **Jade Amoli Jackson** is appointed the adoptive parent of the children, **Adur Taniel Raliha** and **Awor Cage** with full parental rights and responsibilities.
2. The petitioner is directed to register the order with the Registrar of Documents, Uganda Registration Services Bureau, Ministry of Justice and Constitutional Affairs, Kampala.
3. The petitioner is directed to register the order with the British Embassy in Kampala and the Ugandan Embassy in London.
4. The petitioner is directed to obtain a Ugandan passport for the children and to renew them from time to time as required by law.
5. The petitioner is permitted to make arrangements for the children to travel to Britain to be reunited with her.
6. The petitioner is directed to register with the authority responsible for children and family welfare in The United Kingdom and to file a report once every year regarding the state of the welfare and development of the children to the Registrar, Family Division, High Court of Uganda, and to continue to do so until the children are 18 years of age or until directed otherwise.
7. The court makes no order as to costs.

Margaret C. Oguli Oumo

JUDGE

11/12/2009

Present:

1. Mr. Charles Majoli, Counsel for the applicant
2. Nalongo Nandaula, court clerk
3. Nyakwebara Elizabeth, Research Assistant