

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA**

ADOPTION CAUSE NO. 110 OF 2009

IN THE MATTER OF THE CHILDREN ACT, CAP 59

AND

IN THE MATTER OF MIREMBE NANSAMBA CLARE (A MINOR)

AND

IN THE MATTER OF A PETITION FOR ADOPTION BY ERIC DANIEL JUMBA

BEFORE: HON. LADY JUSTICE MARGARET C. OGULI OUMO

RULING.

The petitioner, a British citizen of Ugandan decent brings this petition under the Children Act seeking to adopt Mirembe Nansamba Clare (a minor).

The petition is supported by the affidavit of the applicant dated 25th August, 2009.

The petitioner is 27 years of age and a British citizen married to Sharon Mutesi. He is of Ugandan decent and maternal uncle of the child who is eleven years old as per her birth certificate on the court file attached as Annexure 'A'.

The wife of the petitioner consents to the adoption and so do the parents of the child, Mugabi Geoffrey and Ms. Nabukenya Betty. See their consent on the court file.

At the hearing of the petition, the petitioner was represented by Mr. Paul Sebunya.

In order to adopt a child, the petitioner must have attained 25 years of age, and be at least 21 years older than the child, according to section 45(1)(a) of the Children Act.

The applicant here is 27 years of age, and is 16 years older than the child and does not have the required age difference. However, since the applicant is an uncle, the age difference is of no consequence.

The petitioner is adopting the child alone, and yet he is married to one Sharon Mutesi. Under Section 45(1) (b) of the Children Act, in case of an application by one of the spouses, the other has to consent to the adoption and in this case, Sharon Mutesi, the wife of the petitioner has consented to the adoption. Her written consent is on the court file for record.

Under section 45(3), an adoption order should 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.

In the present case, the petitioner is a male and the child is a female, but he is the maternal uncle who according to counsel for the applicant has been sending money for all the basic necessities of life to wit food, medication, clothing and education to the said child. This qualifies as exceptional circumstances in the eyes of the court. The applicant has been fostering the child under the supervision of the Probation and Social welfare officer, Kampala, whose report is attached to the court file.

The petitioner is a British citizen and we shall consider whether he fulfills the requirements for inter country adoption under section 46 of the Children Act.

Section 46 provides as follows:

(1) 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 three years.
- b) She fostered the child for at least thirty six months under the supervision of a Probation and Social welfare Officer;
- c) Does not have a criminal record;
- d) Has a recommendation concerning 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 recognize the adoption order.

f) The applicant is a Ugandan with British citizenship. The applicant has been providing for the child, the basic needs of life for the last 6 years, under the supervision of a Probation and Social welfare Officer. Both the parents of the child and the petitioner's wife consent to the petition.

Under section 3, paragraph 1(b) of the first Schedule to the Children Act, in making any decision concerning a child, the welfare of the child is of paramount importance.

Counsel for the petitioner, Mr. Sebunya submitted that, the petition is for the best interests of the child. There is no evidence of the petitioner having a criminal record.

In view of the above, court is of the opinion that there are exceptional circumstances existing for the petitioner to be granted adoption, even if he is not resident in Uganda, is a maternal uncle of the child, has fostered the child for at least 6 years under the supervision of a Probation Officer, has no criminal record and the Probation Officer Kampala has recommended him for adoption. The parents of the child have been explained the implications of adoption and have consented to it. Finally, the applicant understands the implications of adoption and has no problem with it.

Consequently court is satisfied that the petitioner has fulfilled all the requirements for adoption under sections 45, 46, 47 and 51 of the Children Act.

In view of the above, the petition is allowed in the following terms and conditions:

1. The petitioner is appointed the adoptive parent of Mirembe Nansamba Clare with full parental rights and responsibilities.
2. The petitioner is directed to register the order with the Registrar of Documents, Uganda Registration Service Bureau, Ministry of Justice and Constitutional Affairs, Kampala.

3. The petitioner is directed to register the order with the British Embassy in Kampala, and Ugandan Embassy in London.
4. The petitioner is directed to obtain a Ugandan passport for the child and to renew it from time to time as required by the law.
5. The petitioner is permitted to travel out of Uganda with the child.
6. The court makes no order as to costs.

Margaret C. Oguli Oumo

JUDGE

10/09/09

Present

1. Paul Sebunya-Counsel for the applicants.
2. The applicant
3. Nalongo Nandaula-Court Clerk
4. Nyakwebara Elizabeth-Research Assistant