THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

FAMILY DIVISION

HCT-00-FD-MA-0088-2008

[Arising from HCT-00-FD-FC-0011-2005]

In the Matter of Adelynn Naomi Luckey and Janae Martha-Ann Luckey

And

In the Matter of Mark Weldon Luckey and Stacy Luckey

BEFORE

THE HONOURABLE MR. JUSTICE FMS EGONDA-NTENDE

RULING

1. The applicants, Mark Weldon Luckey and Stacey Luckey, are the adoptive parents of 2 infants, Adelynn Naomi Luckey and Janae Martha-Ann Luckey by virtue of an adoption order issued by my brother Kasule, J., on 27th day of May 2005. Included in that order was a directive that the adoptive parents

> ‘shall submit progressive reports about each of the minors every year to the Probation and Social Welfare Office, Kampala Uganda and to the Registrar of the Family Division, High Court of Uganda Kampala for the first five years after which the court shall review the position.’

2. It is that the order that is the subject of this application for review. This application, made under Article 34 of the Constitution of Uganda, Sections 82 and 98 of the Civil Procedure Act, Sections 3, 4 and 5 of the Children Act, Order 46 and Order 52, Rules 1 and 3 of the Civil Procedure Rules, is stated to be supported by the affidavits of

Mark Weldon Luckey and Stacy Luckey though on the file I saw only the affidavit of Mark Weldon Luckey.

3. The main ground upon which this application is made is stated to be that,

> 'The requirement in the Adoption Order of submitting a progressive report regarding the minors every year to the probation and social welfare officer in Uganda and the Registrar Family Division of the High Court of Uganda has deprived the children of the benefits that would otherwise accrue to the children as citizens of the United States of America.'

4. The affidavit of Mark Weldon Luckey has 2 paragraphs relevant to this ground. I shall set them out in full.

> '4. That the adoption order granted by the High Court requires us to make annual reports to the High Court with a further requirement that the order will be reviewed after 5 years.
> 5. That this clause has made it impossible for us to finalize the citizen requirements for the children to register as United States citizens because the government is not satisfied that the children have been truly adopted.'

5. As I noted above that is the only affidavit on the file though mention is made of the existence of another sworn affidavit by Stacy Luckey. As it is paragraph 5 of the affidavit of Mark Luckey is the only evidence in support of this application. Other than the assertion that the US government is not satisfied that the children have been adopted, there is no proof to support this stated position of the US government. There is no letter or other communication from the responsible US government department to that effect.

6. In fact one of the conditions for the grant of an adoption order vide Section 46 (1) (e) of the Children Act is that the applicant must satisfy the court that his country of origin will respect and recognise the adoption order. I presume that the applicants must have done so on their original application.

7. I am aware, of course, as was pointed out by Ms Dorothy Kisaka; learned counsel for the applicants, that this additional condition imposed by my brother, Kasule, J., is not directly spelt out in the Children Act. I suppose the judge for reasons that I am not able to read from the record imposed it as a condition to be fulfilled by the applicants which would be reviewed after 5 years. The 5 years are not yet over. There is one year more to run.
8. It could be possible to review this decision, as indeed the judge anticipated that there will be a review, for sufficient cause. The justification put forth by the applicants has unfortunately not been substantiated. No proof has been offered to this court that bears out the claim that the United States government has refused to process the citizenship application for the children because of the condition for reports to be filed by the parents for 5 years. All that is before me is a bare assertion that the US government is not satisfied that the children have been truly adopted. There is no scintilla of evidence demonstrating that dissatisfaction.
9. Unfortunately neither the applicants nor the infants were in court when this application was heard. It was thus not possible for the void to be filled by oral evidence at the hearing of the application.
10. In the result I am satisfied that the applicants have failed to make out case for review of the adoption order. I decline to grant the orders sought.

Signed, dated and delivered at Kampala this 25th day of March 2009

FMS Egonda-Ntende
Judge