

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

ADOPTION CAUSE NO. 148 OF 2008

IN THE MATTER OF THE CHILDREN ACT, CAP 59,

AND

IN THE MATTER OF RUBANGA KENE EDWIN (AN INFANT)

**THE PETITION OF PETER BUITENDIJK KALKMAN AND PITA BUITENDIJK
KALKMAN (FOSTER FATHER AND FOSTER MOTHER OF THE INFANT).**

BEFORE: HON. LADY JUSTICE MARGARET OGULI OUMO

RULING:

The Petitioners are Dutch citizens, copies of their passports are attached and marked as Annextures 'A', missionaries in Uganda, and residents of Nsambwe — Goma, Mukono district, and are desirous of adopting Rubanga Kene Edwin.

The petitioners who are husband and wife jointly make this application — see copies of their Marriage Certificate attached as Annextures 'C'.

At the hearing of the petition, the petitioners were represented by Mr. Okecha Michael. Sections 44, 45 and 46 lay down the requirements for adoption.

We shall therefore examine whether, the petitioners, fulfill the requirements of the law in relation to adoption.

Under section 45(1)(a) of the Children Act, the petitioner has to be at least 25 years of age and at least 21 years older than the child.

The first petitioner is 50 years of age and the second petitioner is 49 years while the child is 4 years of age. In view of the above, court is of the opinion that the petitioners have fulfilled the requirements as to age as they are over 25 years of age and over 21 years older than the child.

The petitioners who are husband and wife are applying jointly, so the requirement for consent of the spouse is not necessary as under section 45(1) (b) of the Children Act.

The application shall not be considered unless the applicants have fostered the child for a period of not less than thirty six months under the supervision of a Probation and Social Welfare officer. In the instant case, the child was born on 15th January, 2005, and the petitioners started caring for him when he was one month old after he was handed to them by the Probation Officer and Local Council of Goma, Mukono District, after his mother died 3 days, after birth and the father who disowned him died in a motor accident. The petitioners have stayed with the child at Noah's Ark Children's Home which is also the permanent home and residence of the petitioners, provided for him and looked after him under the supervision of the Probation and Social Welfare Officer Kampala —a copy of his report is on the court record dated 10-9-08.

Consequently, court is of the view that the petitioners fulfill the requirement as to fostering the child for at least 36 months in accordance with section 45(4) of the Children Act.

The Petitioners are Dutch citizens and the child is Ugandan, so we shall examine whether the petitioners fulfill the requirements for inter-country adoption, under section 46 of the Children Act.

Section 46 provides interalia as follows;

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 3 years.

The petitioners have been in Uganda since 1990, a period of 19 years thus fulfilling the requirement for residency of at least 3 years in Uganda.

b) The applicants must have fostered the child for at least 3 years under the supervision of the Probation and Social welfare officer.

In the instant case, the petitioners have fostered the child under the supervision of a Probation Officer since 2005, a period of 4 years in fulfillment of section 46(1) of the Children Act.

C) The petitioner must have a recommendation concerning his or her ability to adopt a child from his or her country's Probation and Welfare Officer or other competent authority.

In the instant case, the petitioners have a recommendation from the Senior Probation Officer, General and consular Affairs of the Netherlands Embassy, recommending them for the adoption — see recommendation on the court record.

Under section 46(1) (c), the petitioners must show that they have no criminal record. In the instant case, the Netherlands Embassy has confirmed that the petitioners have no criminal record.

Counsel for the petitioners, Mr. Okecha Michael, submitted that the first petitioner in paragraph 13 of his affidavit, deponed that his country will respect the order if granted by this court, thus fulfilling the requirements in section 46(1)(e) of the Children Act.

Under Section 47 of the Children Act, the consent the parents, if known is necessary for the Adoption to be made, In the instant case, the parents of the child are all dead, so their consent is not necessary.

Counsel for the petitioner, Mr. Okecha, submitted that he had explained the effect of section 51 of the Children Act to the petitioners which they understood and are willing to abide by and any other order given by this court.

In view of the above, court is of view that the petitioners have fulfilled all the requirements for adoption in sections 44, 45, 46, 47 and 51 of the Children Act and have satisfied court that the adoption, if granted, will be for the welfare and in the best interests of the child, Rubanga Kene Edwin (infant).

Consequently, the petition is allowed in the following terms and conditions:

- 1 The petitioners are appointed Adoptive parents of Rubanga Kene Edwin with full parental rights and responsibilities.
2. The petitioners are directed to register the order with the Registrar of Documents, Uganda Registration Services Bureau, Ministry of Justice and Constitutional Affairs, Kampala
3. The petitioners are directed to register the order with the Netherlands Embassy in Kampala, and the Uganda Embassy in Brussels.
4. The petitioners are directed to obtain a Ugandan passport for the child and renew it from time to time as required by the law.
5. The petitioners are permitted to travel out of the country with the child.
6. The petitioners are directed to register the order with the officer responsible for children in the Netherlands, and to file a report once every year, regarding the state of the welfare of the child to the Registrar, Family Division of the High Court, Kampala and to continue to do so until the child is 18 years or until directed otherwise.
7. The court makes no order as to costs.

Margaret C. Oguli Oumo

JUDGE

13/10/2009

Present:

1. Mr. Okecha Michael, counsel for the petitioners
2. The applicants
3. Nalongo Nandaula — Court Clerk
4. Nyakwebara Elizabeth — Research Assistant