

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

ADOPTION CAUSE NO. 69 OF 2007

IN THE MATTER OF THE CHILDREN ACT, CAP 59

AND

**IN THE MATTER OF DERRICK MUGOYA, OKOLA WILLY, EDWARD KABUGO
(CHILDREN) OF KAMWOKYA, KAMPALA DISTRICT**

AND

IN THE MATTER OF AN ADOPTION BY CRAIG SIDNEY ESBECK

BEFORE: HON. LADY JUSTICE MARGARET C. OGULI OUMO

RULING:

The petitioner brings this petition under the Children Act Cap 59 seeking to be named the Adoptive parents of Mugoya Derrick, Okola Willy and Edward Kabugo (children).

The petition is supported by the affidavit of the petitioner dated 9th July, 2004.

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

In the instant case, Mr. Criag Sidney Esbek, is a 50 year old American citizen – see a copy of his passport on the court file attached as Annexure “A”.

At the time of the application, the children were aged;

1. Derrick Mugoya, born in May 1998 was 9 years and 10 months old.
2. Okola Willy born in 1992 was 15 years old.
3. Edward Kabugo was 12 years old (see paragraph 11 (iii)(e) of the petition and paragraph 7 of the affidavit of the petitioner.

They are therefore children within the meaning of Section 2 of the Children Act.

The Petitioner was 42, 36 and 39 years respectively older than the children. The petitioner therefore satisfies the requirement for age under section 45 (1) (a) of the Children Act.

The petitioner has never been married and has no biological son of his own but he is by occupation the Project manager of Mango Tree, a company whose objective is to create innovative tools for educators. He is also a part of Ashoka, a global Association for leading social entrepreneurs (see paragraph 5 of the petition).

Incidentally, the children all of whom were in court were disabled. Derrick Mugoya was born with a physical disability that made him lame and was abandoned by his mother who took him to his grandfather after his stepfather had rejected him. The grand father also rejected him as he could not support him financially, emotionally and in any other way. The petitioner agreed to take him for medical evaluation (see paragraph 5 of the petitioners' affidavit).

Derrick Mugoya was fostered by the Petitioner for 30 months under the supervision of a Probation and Social Welfare Officer of Kampala City Council since 14/12/2004. Annexure "K" is the Care Order.

The Petitioner has complied with section 45 (1)(d) and (e) which provide that the applicant should have fostered the child for at least thirty six months under the supervision of a Probation and Social Welfare Officer, who has submitted a report 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 which other recommendations have been filed in support.

In section 45(1) 3 an application should not be made in favour of a sole male applicant in respect of a female child, in other words, the sole applicant must be of the same sex as the child.

In the instant case, the applicant is male and all the children are males, so he complies with requirements of section 45 (3).

The petitioner is an American citizen so we shall examine whether he fulfills the requirements as to Inter country adoption under section 46 of the Children Act.

Section 46 provides inter alia 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 three years
- b) has fostered the child for at least thirty six months under the supervision of a probation and Social Welfare Officer.
- c) has no criminal record
- d) has a recommendation concerning his or her suitability to adopt a child from his or her country's probation and 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.

The petitioner, Craig Sidney Esbeck has been in Uganda since July, 1997 a total of 10 years. See copy of his passport attached as Annexure "A"

The petitioner met Willy Okola, a total orphan, in 2003 who he was introduced to by his gardener with a request to sponsor his education (paragraph 6 of the Petitioner's affidavit) and he has stayed with him ever since. He formally fostered Willy Okola for over 36 months since 6/09/2005. Annexure "M" is the Care order. He is deaf. He is now at school but resides with the petitioner, under the supervision of a Probation and social Welfare Officer, who submitted his report.

The third child is Edward Kabugo. The child's parentage cannot be established. The Petitioner met the child on 17/02/10 while doing voluntary work at Naguru Reception Centre. After discussing his history with the staff of the Centre, he decided to adopt him. He has been living with the child since 20/02/07 under the supervision of a Probation and social welfare officer of Kampala City Council when he formally started fostering the child. Annexure "N" is a copy of the Care Order. The child is in the custody of the applicant at Plot 35 Ntinda Avenue, Nakawa Division.

The petitioner has not fostered 2 children for the required 36 months. However in Edward Byaruhanga Katumba V Daniel Kiwalabye Musoke. Civil Appeal No. 2/08, GM Okello, JA at page 127 held that

“Court must therefore formulate their own criteria for determining whether the procedural rules are to be regarded as mandatory, in which case disobedience will be treated as irregularity not affecting the validity of what has been done”.

Thus section 46 is only directory and not mandatory and court waives the remainder of the 36 months requirement as it is in the children’s best interest.

Counsel for the petitioner, Ms. Victoria Katamba, submitted that the petitioner is entirely responsible for the children’s support and maintenance and has employed special help to look after the disabled children.

Counsel submitted that the necessary consent in accordance with section 47 of the Children Act has been attached to the petition and marked as Annexures “I”, “J” “L” and “O”.

That the children have not been the subject of any order of an application of adoption.

The applicant has no criminal record in Uganda or any other country – see paragraph 8 of the petition. A Certificate of good conduct from the International Criminal Police Organisation is attached as Annexure “E”.

The petitioner has also satisfied court that his country of origin, the United States of America will respect and recognize the Adoption Order.

Court has had the opportunity to observe all the children who have different disabilities and some like Derrick Mugoya has been rejected and abandoned by his own mother and grandfather, yet the applicant is willing and ready to take care of these children and provide them a home, love and care and has done so for a long time, and even put them at school. Court cannot reach any other conclusion other than that the petition, if granted will be for the welfare of the children.

Consequently, the petition is granted in the following terms and conditions:-

1. The Petitioner, Craig Sidney is appointed the Adoptive parent of the children, Derrick Mugoya, Willy Okola and Edward Kabugo.
2. The Probation and social Welfare Officer Kampala shall monitor the state of the welfare of the children and submit a half year report to the Registrar, Family Division in the High

court, beginning with 30th April , 2008 and to continue to do so until the children are eighteen years or until directed otherwise by court.

3. The court makes no orders as to costs.

Margaret C. Oguli Oumo

JUDGE

19/03/2010

Present

1. Isaac Mugume holding brief for Mrs. Victoria Katamba- Counsel for the Petitioner
2. Betty Lunkuse- Court clerk