

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
FAMILY CAUSE NO. 83 OF 2010
IN THE MATTER OF DAVID MEYER SSEMPIJJA (INFANT)
AND
IN THE MATTER OF AN APPLICATION FOR APPOINTMENT AS ADOPTIVE
PARENTS OF DAVID MEYER SSEMPIJJA (AGED 1 YEAR) BY ANDREA CASTILLE
GILKERSON AND SETH WAYNE GILKERSON

BEFORE: HON. LADY JUSTICE MARGARET C. OGULI OUMO

RULING:

The petitioners, American citizens, Andrea Castille Gilkeson and Seth Wayne Gilkeson, a married couple of 405 Osage Street in Harrisville Missouri, USA, bring this petition under Articles 139 (1) and 34 of the Constitution of Uganda, 1995; sections 15, 14, 33 and 39 of the Judicature Act cap 13, sections 3, 4, 5 and 46 the Children Act cap 59 for orders that adoption of the infant be granted to them and costs of the suit.

The petition is supported by the Statutory Declaration of the applicants dated the 8th May, 2010. The grounds of the petition are as follows:

1. That the applicants are American citizens(their passport copies are attached on the court file)
2. That the petitioners live at 405, Osage Street, Harrisonville Missouri, USA.
3. That the petitioners are married — a copy of marriage certificate is attached on the court file as Annexure LBI.
4. That the petitioners are employed.
5. That the petitioners have no criminal record
6. That the petitioners were recently granted a guardianship order by this honorable court vide Family Cause No.39 of 2010 in respect of the infant.
7. That the petitioners have never been convicted of child abuse.

8. That the petitioners wish to adopt the infant who is not in good health and in need of urgent medical attention in U.S.A.
9. That the petitioners are physically and mentally healthy.
10. That the petitioners have been recommended to be adoptive parents - copies of the Home Study are attached on the record.
11. That they have not received or agreed to be paid or given a reward as consideration for adopting the child.
12. That they undertake to comply with the adoption order made by this court.

At the hearing of the petition, the petitioners were represented by Mr. Majoli Charles, assisted by Rebecca Mugabi, learned counsel, who submitted that, the petitioners were appointed legal guardians on 19/3/2010.

We shall examine the law regarding Adoption to see whether the applicants qualify to adopt the child under the Children Act.

Under section 44(b) of the Children Act, the High Court has powers to grant an adoption order where the petitioners are non citizens and the child is a Ugandan.

Under section 45 (1) (a), the applicants must be at least 25 years of age and at least 21 years older than the child.

Counsel for the applicants submitted that the applicants are 38 and 34 years old. The child is 1 year old and so they are 37 and 33 years older than the child. Therefore, the Petitioners fulfill the requirements as to age, in relation to the child within the terms of section 45 (1) (a).

Under section 45(1) (b) of the children Act, in case of an application by one spouse, the other must consent to the adoption. In the instant case, the applicants who are married bring this application jointly.

Mr. Majoli submitted that the child is an abandoned child whose mother's whereabouts are unknown. That the father of the child has no source of income to look after the child.

Upon the grant of the guardianship order to the petitioners, they took the child for medical examination and it was established that the child's health was not good and the child had Pulmonary Tuberculosis and is underweight. The doctor recommended him to go for specialized treatment. The report is attached on the file. Counsel submitted that under such a condition of the child, it is better for him to live under the close care of the petitioners and they can only do this if granted adoption. Secondly, counsel submitted that the petitioners have a life Insurance Policy, which will cater for the child. Therefore, they are in a position to look after the child.

Under section 46(1) of the Children Act, a person who is not a citizen of Uganda, may in exceptional circumstances adopt a child if he or she

1. Has stayed in Uganda for at least 3 years
2. Has fostered the child for at least 36 months under the supervision of a Probation and Social welfare officer;
3. Does not have a criminal record
4. Has 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; and
5. Has satisfied court that his or her country of origin will respect and recognize the adoption order; and

Under section 47, the consent of the parents if known, is necessary for the adoption order to be made. In the instant case, the applicants are American citizens but have neither lived in Uganda nor fostered the child for over 36 months as required by the law in 46 (1) (a) & (b). However the applicants have no criminal record and have been recommended by an authority from their country as suitable adoptive parents. They have also shown court their country of origin, U.S.A will respect and recognize the Adoption order. Finally, the mother of the child abandoned her and her whereabouts are unknown but the father, who is unable to look after him was in court and confirmed his inability to look after the child including giving his consent for the Adoption of the child.

The High Court has in a number of cases held that, in exceptional circumstances, the court can grant an adoption order if it is for the welfare of the child. See: *In The Matter of Paula Robertson and Cynthia June Robertson(an infant)Adoption Cause No. 3? of 2004 and In The matter of an Application for Adoption of Mukisa Joseph and Nambi Daisy(in fonts) by Blake Austin Gaunt and Keltie Bree Gaunt Adoption Cause No. 145 of 2009*

Court is of the view that because of the health condition of the child, exceptional circumstances do exist to warrant the court to exercise its discretion to grant the adoption despite not fulfilling all the requirements of section 46 of the Act. The couple also has two young children which will help this child integrate into the petitioners' family.

Consequently, the application is allowed and the applicants are appointed adoptive parents of the child with full parental rights and responsibilities in the following terms and conditions:-

1. The applicants are directed to register the order with the Registrar of Documents, Uganda Registration Services Bureau, Ministry of Justice and Constitutional Affairs, Kampala.
2. The applicants are directed to register the order with the United States Embassy in Uganda, and the Ugandan Embassy in Washington.
3. The applicants are permitted to travel out of Uganda with the child.
4. The petitioners are directed to register the order with the authority responsible for family and children welfare in Harrisville Missouri-USA and to file a report once every year regarding the state of welfare and development of the child with the Registrar, Family Division of Uganda at Kampala and to continue to do so until the child is 18 years of age or until directed otherwise.
5. The court makes no order as to costs.

MARGARET C.OGULI OUMO

JUDGE

15/7/2010

Present:

1. Charles Majoli and Agnes Naziiwa- Counsel for the applicants
2. Sauda Shaban- court clerk
3. Elizabeth Nyokwebara -Research Assistant