

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT JINJA
FAMILY CAUSE NO. 131 OF 2010
IN THE MATTER OF RUTH PAULA NANTONGO (INFANT)
AND
IN THE MATTER OF A PETITION FOR APPOINTMENT AS THE ADOPTIVE PARENTS
OF RUTH PAULA NANTONGO AGED ONE YEAR BY TIMOTHY BALTS AND
KIMBERLY BALTS

BEFORE: HON. LADY JUSTICE MARGARET C. OGULI OUMO

RULING: _

The petitioners, Timothy Balts and Kimberly Baits, American citizens Copies of their passports and Marriage Certificate are attached as Annextures “A” and “B” respectively), residents at 12506, Treasure Cove, Huntersville, North Carolina, USA, bring this petition seeking for the following orders;

1. That they be appointed the adoptive parents of Paula Nantongo, infant.
2. That the costs be provided for.

The petition is supported by the Statutory Declarations of the applicants dated the 15th June,

2010, the affidavits of Namboze Loy-the O/C Child and Family Protection Unit Natete Police

Station dated 30/06/10, Juliet Kibira-the General Secretary, Kitaka Zone, Busega Division,

Kampala District dated 25/06/10, Kitabi Hamis-the person who found the abandoned child

dated 25/06/10 and that of Barbura Nankya-the Administrator of M/S Sanyu Babies Home dated

29/06/10.

The grounds of the petition are briefly as follows:

1. That the petitioners have three children, namely; Elizabeth Ashley Balts-5 years old, Connor Robert Balts-2 years and Alexander Wesley Baits, 2 years.
 2. That the petitioners are employed.
 3. That the petitioners have no criminal record
 4. That the petitioners have never been convicted of child abuse.
 5. That the petitioners are physically and mentally healthy.
 6. That the petitioners have been recommended as suitable adoptive parents
 7. That the infant was abandoned and has no known relatives
 8. That the infant Ruth Paula Nantongo has frequent bronchopneumonia, pharyngitis and bilateral otitis media, mullusum, contagusum and currently being investigated for pulmonary tuberculosis that needs specialized medical treatment in the USA.
 9. That the petitioners were informed by their lawyer that given the background of the infant and her medical condition, the court has discretionary powers under s.46 of the Children Act to grant Adoption in exceptional circumstances.
 10. That the 2nd petitioner volunteered at Sanyu Babies Home, where she met the infant.
 11. That the Probation and Social Welfare Officer, Kampala has recommended the petitioners.
 12. That the petitioners hereby undertake to comply with the adoption Order made by this honorable court.
 13. That the petitioners have not received or agreed to be paid or given a reward as consideration for adopting the child herein.
 14. That the petitioners hereby undertake to comply with adoption Order made by this Honorable court and will be respected.
- At the hearing of the petition, the petitioners were represented by Mr. Peter Nyombi and assisted by Rebecca Mugabi and Agnes Naziwa.

The first issue whether the application is for the welfare and in the best interest of the infant?

Mr. Peter Nyombi submitted that, the infant was on 30/6/2009 found by one Kitabi Hamisi abandoned at Kitoro zone, Natete, Rubaga Division by an unknown person. That Mr. Hamisi reported the matter to the Chairman LCI Kitaka zone — Rubaga Division. Mr. Nyombi submitted that the Chairman was referred to Natete Police Station by the General Secretary of the same zone — see Annexure “B” to Mr. Hamisi’s affidavit.

The officer in charge of the Family and Child Protection Unit Natete referred the matter to the Probation and social Welfare Officer, Rubaga Division who in turn referred the child to the Probation and social Welfare Officer, Kampala City Counsel.

Mr. Nyombi contended further that the child was committed on the 15/5/2009 to Sanyu Babies Home — see copy of the court order on the court file.

The infant’s photograph was subsequently advertised in the New Vision Newspaper of 21/12/09 to establish whether there are any claimants to the infant but nobody turned up to claim the infant Annexure “F”.

In view of the above, court is of the view that the application, if granted, will be for the welfare and in the best interests of the child.

The 2nd issue is whether the applicants are suitable adoptive parents?

Mr. Nyombi submitted that, the petitioner, originally applied for appointment as legal guardians of the infant vide FC 8/2010 but this application was never heard and when they subsequently took the infant for medical examination it was discovered that, the child has frequent bronchopneumonia, pharyngitis and bilateral otitis media, mullusum, contagusum and is currently being investigated for pulmonary tuberculosis. See: reports from Mengo Hospital and The Surgery. The reports recommended the child to be taken for specialized medical treatment in the USA.

Under S. 44 of the Children act, the High Court has jurisdiction to grant adoption orders where the child or applicant is a non citizen. In this case, the applicants are foreigners but the child is a Ugandan Citizen. Therefore this court has jurisdiction to hear and determine this case.

The applicants are American citizens, and we shall examine whether they qualify to adopt the child.

Under 5.45(1) (a) of the Children Act, one of the applicants has to be 25 years of age or at least 21 years older than the child. In the instant case, the petitioners are 39 and 38 years old. The infant is approximately 1 year and 4 months old. They therefore fulfill the requirement as to age under that section.

Under section 46 of the Children Act, the High Court may in exceptional circumstances grant an adoption order to a non citizen if he or she has;

- a) stayed in Uganda for at least 3 years
- b) has fostered the child for 36 months under the supervision of a Probation and Social Welfare Officer.
- c) has no criminal record.
- d) has a recommendation from the Probation and Social Welfare Officer or other authority as to their suitability to adopt the child.
- e) has shown court that their country will respect and recognize the adoption order.

Mr. Nyombi submitted that this court has held that the provisions of section 46 are not mandatory but are merely directory — see *In the Matter of Mukisa Joseph and Nambi Daisy, Adoption Cause No. 145 of 2009.*

The petitioners have been recommended as suitable for adoptive purposes — see copy of their International Home Study attached as Annexure “D”.

The petitioners have no criminal record as confirmed by their criminal clearance Certificates attached as Annextures “E”, “F” and “C” respectively on the court file.

Mr. Nyombi contended that the petitioners are both physically and mentally healthy. Their Medical Certificates are attached as Annextures “G” and “F” respectively.

That the petitioners understand the implications of adoption as they are both lawyers.

Mr. Nyombi argued that given the fact that the child has serious medical ailments of which doctors have recommended for specialized medical treatment, the requirements in section 46 should be waived.

In the instant case, having considered that the child has medical conditions for which the applicants are willing and able to provide for, it is my considered opinion that having submitted that their country will respect and recognize the adoption order, the application is allowed on the basis that special circumstance exists to justify the court to exercise its discretion and grant the order of adoption for the welfare and in the best interests of the child.

Consequently, the petition is allowed and the applicants are appointed Adoptive parents of the child Ruth Paula Nantongo in the following terms:

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 directed to register the order with the United States Embassy in Kampala, and the Ugandan Embassy in the Washington.
3. The applicants are directed to obtain a Ugandan passport for the child and renew it from time to time as required by the law.
4. The applicants are permitted to travel out of Uganda with the child.
5. The applicants are directed to register the order with the authority responsible for children in Treasure Cove Huntersville, North Carolina, USA and to file a report once every year with the Registrar, Family Division, High Court of Uganda at Kampala, regarding the state of welfare and development of the child until the child is 18 years old or until directed otherwise.

6. The court makes no orders as to costs.

MARGARET C. OGULI OUMO

JUDGE

26/07/2010

Present

1. Ms. Rebecca Mugabi-Counsel for the Petitioners
2. Betty Lunkuse-Court Clerk