

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA**  
**FAMILY CAUSE NO. 129 OF 2010**  
**IN THE MATTER OF ALEX MALIK HODGKINS (INFANT)**  
**AND**  
**IN THE MATTER FOR A PETITION AS ADOPTIVE PARENTS OF ALEX MALIK**  
**HODGKINS (AGED 1 YEAR) BY FRANKLIN GUILLAUME AND DENISE JO-ANNE**  
**GUILLAUME**

**BEFORE: HON. LADY JUSTICE MARGARET C. OGULI OUMO**

**RULING:**

The petitioners, Franklin Guillaume and Denise-Jo-Anne Guillaume are husband and wife — see a copy of their Marriage Certificate attached as Annexure “B” on the court file and both are Canadian citizens as evidenced by copies of their passports on the court file. They are 30 and 35 years old respectively (see: copies of their passports attached as Annexures “A”) and the child, a Ugandan citizen is 1 year and 5 months old as evidenced by his Birth Certificate on the court file.

They are praying for orders that they be appointed the adoptive parents of the child Alex Malik Hodgkins and that costs be provided for.

At the hearing of the application, the petitioners were represented by Mr. Nyombi Peter and assisted by Ms. Rebecca Mugabi and Agnes Naziwa.

The child was abandoned at Bugembe, Budumbuli East, near Mr. Magoma’ house in Jinja District. Mr. Nyombi, counsel for the petitioners, submitted that the matter was reported to the Probation and Social Welfare Officer of Jinja Mr. Opio Ouma who requested the Administrator of Welcome Home Ministries to look after and take up custody of the child. Welcome Home Ministries took up custody of the child. On 18th June, 2009 it was granted a Care Order in respect of the child. In a bid to trace his parents, and or relatives, a picture of the infant was advertised in the New Vision News paper of 14th September, 2009 but nobody has turned up to claim the child.

The petitioners applied for and were granted a Guardianship Order over the child vide Family Cause No. 131 of 2009 and copies of the Order and detailed Ruling are attached as Annexures “C” & “D” on the court record.

Mr. Nyombi, counsel for the petitioners submitted that the child has no known relatives and the petitioners are now applying to be appointed adoptive parents of the child.

Mr. Nyombi contended that under section 46 of the Children Act, for a non citizen to adopt a Ugandan child, the non Uganda must have stayed in Uganda for at least 3 years and fostered the child for 3 years.

That *In Re Mukisa Joseph and Nambi Daisy, Adoption Cause NO. 145 of 2009*(in [ants), the court held that the provisions of section 46 are not mandatory but directory. That court granted adoption to Blake and Keltie Gaunt (the applicants in the matter) because it was in the best interests of the 2 children.

Mr. Nyombi argued further that, *In Re M (an infant) Civil Appeal No. 22 of 94* where the Chief Justice of Uganda, J.B. Odoki held that the guiding principle in considering matters affecting children, the best interest of the child is paramount.

That according to the Statutory Declaration of the 1st petitioner, he deponed that his Medical Insurance Programme from his employees covers only unmarried biological children and Adoptive children. That in , *in Re Namakula Florence (infant) FC81/2010*, court appointed Ross Allan Smith and Sabrina Ann Smith as the adoptive parents of Namakula Florence because Florence couldnot not benefit from privileges accorded to children of staff of the United Nations unless Florence was adopted by Ross Allan Smith and Sabrina Anne Smith.

Furthermore, that the petitioners cannot live in Uganda for a period of 3 years as a result of the medical condition of their son Rhys Guillaume — a copy of the medical report of the child is attached to the first petitioner’s Statutory Declaration as Annexure “F”.

The petitioners have no criminal record and have never been convicted of child abuse. The petitioners are physically and mentally healthy.

Mr. Nyombi contended that the petitioners have been recommended as suitable adoptive parents after undergoing a Home Study report from their state.

Under section 45 (1) (a) of the Children Act, a person can apply for adoption if he or she is 25 years of age and at least 21 years older than the child. The petitioners here are 30 and 35 years old and the child is 1 year and 5 months old. They are therefore within the age bracket for adoption purposes.

The petitioners are married and are applying for adoption jointly.

Under section 46 of the Children Act a non citizen may in exceptional circumstances be granted adoption if;

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

In the instant case, the petitioners have neither stayed in Uganda for 3 years nor fostered the child for 36 months but their lawyer, Mr. Nyombi, submitted that the petitioners cannot stay in Uganda because of the medical condition of their son Rhys Guillaume—see copy of the medical report attached as Annexure “F”, which shows that the boy's medication has to be specifically made and handled which makes it impossible for the parents to reside outside Canada and he prayed that section 46 (1) (a) and (b) of the

Children Act be waived in favor of the infant as there exists special circumstances that justify court to do so; that is;

- 1) The child cannot access the medical scheme of the 1 petitioner's employees, unless he is adopted.
- 2) The petitioners have a son who has a delicate condition which makes it impossible for them to live away from Canada.
- 3) The infant's parents are unknown as the infant was abandoned at Bugembe in Jinja.

The High Court has in a number of cases held that the welfare of the child is paramount and the conditions in section 46 of the Children Act are directory and not mandatory and the court must look at each case and depending on the circumstances to grant an adoption order if it is for the welfare of the child. In The Matter of Paula Robertson and Cynthia June Robertson, infant Adotion Cause No. 3.1 Of 2004 where Justice Musoke Kibuuka held that "an Adoption Order may not be refused to be granted where the refusal is evidently contrary to the welfare principle". In Michelin and Thomas Nikundiwe Adoption Cause No 5 of 2004, (unreported) the court issued an adoption order despite the fact that all the conditions for fostering the infant for at least 36 months had not been fulfilled.

In the instant case, the petitioners have no criminal record, they have been recommended by an authority from their country as suitable adoptive parents and their country will respect the adoption order. They are within the age bracket for adoption purposes and it will be for the welfare and in the best interests of the child if he is adopted because he is an abandoned child with no known relatives or parents.

Therefore, the petitioners Frankilin Guillaume and Denise Jo-Anne Guillaume are appointed adoptive parents of Alex Malik Hodgkins in the following terms and conditions:4

1. The petitioners, FRANKLIN GUILLAUME and DENISE JO-ANNE GUILLAUME are appointed the Adoptive parents of the child, Alex Malik Hodgkins 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 Canadian Embassy in Uganda, and the Ugandan Embassy in Ottawa.
4. The petitioners are permitted to travel out of Uganda with the child.
5. The petitioners are directed to register the order with the authority responsible for family and children welfare in Edmonton, Alberta and to file a report, once every year regarding the state of welfare and development of the child to the Registrar, Family Division, High Court at Kampala, and to continue to do so until the child is 18 years of age or until directed otherwise.
6. The court makes no order as to costs.

**MARGARET C.OGULI OUMO**

**JUDGE**

**30/07/10**

Present:

1. Ms. Rebecca Mugabi-Counsel for the applicants
2. I Petitioner
3. Betty Lunkuse-Court Clerk
4. Nyakwebara Elizabeth-Research Assistant