

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT MUKONO  
ADOPTION CAUSE NO.07 OF 2018  
IN THE MATTER OF THE CHILDREN ACT (CAP 59) AS AMMENDED BY ACT  
16/2016  
AND  
IN THE MATTER OF A PETITION FOR THE ADOPTION OF GIFT INZIKU (THE  
CHILD) BY ROSS ALAN GAMES AND LINDSEY MARIE GAMES**

**BEFORE HON. LADY JUSTICE MARGARET MUTONYI, J. H. C.**

**RULING**

This is a Petition for the adoption of Gift Inziku herein after referred to as the child brought by Ross Allan Games and Lindsey Marie Games herein after referred to as Petitioners.

The Petition is brought under the provisions of the children Act Cap 59 as amended by the children (Amendment) Act 2016, Act No.9.

Counsel Biroli Francis who held brief for Isaac Mugume of Mugume and Company Advocates represented the petitioners. The Petition seeks for the following Orders:

- (a) That Ross Allan Games and Lindsey Marie Games be appointed the adoptive parents to Gift Inziku.
- (b) That the court uses its discretion and waives the statutory requirement of the 1 year continuous stay in Uganda.
- (c) That the Games family name be added onto the child's names.
- (d) That the costs of this Petition be provided for by the Petitioners.
- (e) That such further and other orders be made as the nature of this case may require.

The Petition Is supported by the Affidavits of Lindsey Marie Games and Ross Allan Games dated 8<sup>th</sup> March 2018, Inziku Macharious the child's father dated 6<sup>th</sup> June 2018 and Lydia Naigaga the Probation and Social Welfare Officer of Buikwe District dated 04<sup>th</sup> June 2018, Shiundu Mukuya John of Kidron Children's Home dated 04<sup>th</sup> June 2018 and Kaleebu Joseph a social worker dated 6<sup>th</sup> June 2018.

Adoption is the creation of a parent-child relationship by Judicial Order between two parties who are unrelated creating a lifelong relationship of parenthood between a child and the adoptive parent.

### **The Background of the child**

The child Gift Inziku was born to Oriek Janet (deceased) and Inziku Macharious in Kagoma village Buwenge Town Council, Jinja District on 6<sup>th</sup> March 2010 as per the birth Certificate issued by NIRA on 30<sup>th</sup> April 2018. (It is attached to Inziku Macharious' affidavit and marked "C"). She is now 7 years old.

Her father Macharious Inziku was before court and he in fact swore an affidavit in support of the petition which is on court record. He informed court that he and his current wife are both HIV positive. That he had an extra marital affair with the child's mother one Janet Oriek now deceased as per the death certificate attached to the affidavit of Macharious and marked "B". Gift was very sickly as a child and was diagnosed with HIV at a very tender age. She started receiving treatment from Nalufenya children's hospital. The child's father later left Janet Oriek the child's mother and went back to live with his legal wife.

According to the investigation report by one Kaleebu Joseph a social worker, Gift's mother who was sickly decided to have her admitted into Covenant Children Home for safety since she was not sure of living long. She informed the home authorities of her HIV Status and worries about her child's life and future since she was HIV positive and threatened with death any time as her condition was ailing.

She also told them that the child was an orphan as her father was long deceased.

On admission into the home the child was put on strict medication and nutritional diet plus drug supplements.

After the demise of the mother, the home embarked on a search to find Gift's relatives and family. By good luck it was discovered that Gift's biological father was alive and well and not dead as alleged by her mother. He was living at Buwenge town council on Kamuli road.

He however declined to take on his parental responsibility preferring the child to stay at the children's home because she was very sickly and would not be able to take care of her. His wife was neither ready nor willing to take care of the step child.

Inziku Macharious stated before this court that his wife would be described as hostile to the child and he was very certain that she would never accept to take care of Gift in her home as one of her own.

He also told this court that he didn't have the requisite funds to provide Gift with the medicines and special diet she needed given that she is an HIV positive child who needs special attention and care.

The petitioners got to know about Gift in July 2012 while volunteering at Own home ministries and while staying at covenant guest house. They noticed that she was very tinny and sickly. Upon examination and further inquiry they found out that she was HIV positive. As a couple they resolved to adopt her.

They started sponsoring the child immediately though informally through Kidron Children's home until 21<sup>st</sup> November 2016 when they became her foster parents. Since they could not stay in Uganda for so long, they gave a power of attorney to pastor John Shiundu the Director Kidron and his wife to directly tend to the child's needs during their physical absence. Copies of the foster care placement Order and Powers of Attorney are attached to the petition and marked L2 and L3.

The Probation Officer recommended the petitioners as fit parents for the infants having shown their unconditional love and care to her. The father personally gave his unconditional consent to this adoption as the best solution to the infant's plight since she would never be accepted in his home by his wife.

### **Background of Petitioners**

The Petitioners are a couple and American Citizens. Ross Alan Games is a holder of an American passport No.489810650 while Lindsey Mary Games is a holder of passport No.525410974. (Copies of their passports are attached to the petition as A1 and B1). They are residents of Expedition place Noblesville, Indiana 46060.

Ross Alan is 27 years old while Lindsey is 29 years old. They have been married since 21<sup>st</sup> February 2014. (A copy of their marriage certificate is attached to the petition and marked C). They have no children of their own.

Ross Alan is employed by Cummins Inc. in planned maintenance residual sales and he earns an annual salary of US\$50,000(fifty thousand US dollars). The co-petitioner Lindsey is employed with Peyton Manning Children's Hospital as a nurse and her annual salary is US\$ 18,000(eighteen thousand US dollars). (Copies of their employment verification letters are on record marked D and E respectively).

They are gainfully employed and can afford to give this child a good home and all the care she deserves.

The issues for this court's resolution are ***whether the Petitioners qualify under Ugandan law to adopt the child and if this adoption is in the best interest of the child.***

### **RESOLUTION OF ISSUES**

**1. Whether the Petitioners qualify under Ugandan law to adopt the child.**

Part VII of the children Act Cap 59 as amended in 2016 provides for Adoption from sections 44 to 48.

The Applicants in this case are aged 27 and 29 years old while the child is 7 years old. According to section 45(1) of The Children Act both petitioners should be 25 years old and at least one of them should be 21 years older than the child. Herein, both petitioners are over 25 years old and the 2<sup>nd</sup> petitioner Lindsey is over 21 years older than the child. They thus fulfill the age requirement under section 45 (1) (a) of the children Act.

This is an inter country adoption which allows a non-citizen of Uganda in exceptional circumstances to adopt a Ugandan child. It is provided for under S.46 which sets conditions that should be fulfilled by the Applicant;

He or she must have stayed in Uganda for 12 months, fostered the child for 12 months, must not have a criminal record, must have a recommendation concerning his or her suitability to adopt a child from their country's probation and welfare office or other competent authority and he/she should satisfy court that his or her country of origin will respect and recognize the adoption order.

The Applicants have been cleared by the Federal Bureau of Investigations US Department of Investigations, The Indianapolis Metropolitan police and Interpol Uganda, which issued both of them with Certificates of good conduct declaring them free of any criminal record. (Their criminal clearances are attached as G&H respectively).

They have been highly recommended by MLJ International Adoptions Inc. in a home study report dated 30<sup>th</sup> May 2017 which is attached to the petition and marked J. It was prepared by Meghan Rivard, a Social Worker.

They have also been highly recommended by Lydia Naigaga the Probation Officer of Buikwe District who is well aware of the background of the child and also had ample time to relate with and observe the petitioners whom she found to be fit and proper parents and who can be trusted with the child. (The report is attached to her affidavit and marked E).

They have also averred in their affidavits in support of the petition that their country will respect the Adoption Order.

However, the petitioners have not continuously lived in Uganda and fostered the child for one year as required under section 46(a) of the Children Act as amended.

Section 14 of the children (Amendment) Act 9 of 2016 amended section 45 (4) as follows:

**“The court may in exceptional circumstances waive any of the requirements specified in subsection (1)”.**

To this, counsel for the petitioners noted that these provisions are only directory and not mandatory. He invited court to use its discretionary powers and make a decision which is in the best interest of the child.

He noted that the petitioners were American citizens with employment back home. They need to earn a living for themselves and the child and as such, they could not continuously stay in Uganda for a whole year. That be that as it may they have travelled to Uganda several times to meet and bond with the child and also continued providing for all her needs through Kidron Children Home. He cited FC NO.47 OF 2017, IN THE MATTER OF AMARI DAPHNE, wherein court noted that;

***“...fostering a child for one year does not mean having physical custody of the child. It includes any conscious effort made by a prospective petitioner(s) to support a child through any practical arrangement. Such support may be channeled through a parent or relative of the child, or any other person having physical custody of the child. This arrangement is referred to as constructive fostering.*”**

I entirely agree with the above holding.

The child Gift Inziku was present in court during the hearing. Court observed that she was small but looked healthy and well and that she has bonded so well with the petitioners.

This court notes that foster care is not a permanent placement option for a child in need of parental love, care, protection, and serious medical care and monitoring like the infant in this case.

***As a general rule, the Social Worker under foster care arrangement is required to work for the eventual reunification of the child with her/his family or community if possible.***

This approach must therefore be carried out within a frame work of planning for permanence in the child's life which must be balanced with understanding the need for stability of the child's life where there is no hope that the infant will be re united to willing, loving and caring family members.

Where foster parents are interested in adopting the child who has no willing relative to take on responsibility after the foster care period, it is indeed in the best interest of the child that the foster parents continue with the responsibility on a permanent basis.

In this case, the Petitioners have not fostered the child for one year as required by law, but the father of the child has never exhibited any love towards this child. In fact he is a stranger to the child.

Given the reality of hostility from step mothers made from hell like the infants step mother, there is no possibility that she will be accepted and treated with dignity in her own father's house hold. She has been rejected even after knowing that her mother is long dead.

Gift like any other child deserves better. She deserves to be loved and treated with dignity. She deserves to be raised from a home environment, not an institution where the father left her to be all this time.

Her medical condition cannot be reemphasized. The 2<sup>nd</sup> petitioner Lindsey being a children's nurse, places her in the best position to handle Gift's condition.

The fact that both petitioners are gainfully employed and need their jobs to look after Gift which responsibility they have already undertaken presents exceptional circumstances to waive the statutory requirement of living in Uganda and fostering the child for one year.

In court's view, fostering for one year which is a temporary condition cannot be used to frustrate the process that leads to permanence in a child's life.

Adoption leads to complete termination of parental responsibilities and rights. Removal of a child from their parents may appear to be unconstitutional but may be reasonable and justifiable in certain situations much as there may be no possibility of automatic review when the situation favors returning the child to the biological parent.

Gift's father gave his irrevocable consent to the adoption (see section 47 of the Act). He feels completely helpless and incapable of taking care of his child. He is also HIV positive and has a dependant family with many other children.

When court asked Gift to greet her biological father, she completely clung to the 2<sup>nd</sup> petitioner and even refused to look at him.

In view of all the above, the petitioners have satisfied court as fit and proper parents for the infant.

The first issue is resolved in their favour.



**Whether this petition is in the best interest of the child as required under section 48(1) (b) and section 3 of the Children Act.**

When court is dealing with matters relating to the upbringing of children, their welfare is paramount as elaborated **in the matter of Deborah Joyce Alitubeera and Richard Masaba (Infants) Civil Appeal No.70 of 2011.**

Article 3 of the United Convention on Rights of a Child provides in part as follows:

“The best interest of children must be the primary concern in making decisions that may affect them...”

The petitioners have provided financial support, love and care that is needed for this child’s development. They have opened the door to their home in the USA and are ready to have her as their own.

When this court asked Alan why they had chosen to adopt Gift despite her HIV status, he had this to say;

***“We decided to adopt her because we feel that every child deserves to be loved and have a home regardless of their health condition and status.”***

The above statement is profound. It shows the agape love they have for this child and willingness to take care of her. It is all about the child, not themselves. They have already bonded so well. Separating her from them would be the cruelest thing to happen to her. Her own family especially the surviving parent was not there for her at the time she needed him most.

This court finds that the best option for this child is her adoption by the petitioners whom I have found to be very loving, responsible, kind and able to take care of the holistic growth and development of the child.

The second issue is resolved in favour of the Petitioners.

**Consequently the Petition is allowed with the following Orders:**

1. Ross Alan Games and Lindsey Marie Games are appointed the adoptive parents of the child Gift Inziku and the relationship of parents is hereby established with all rights and privileges incident thereto including the right of inheritance of the property of the adoptive parents.
2. The Registrar General of Births and Deaths is hereby directed to make an entry recording the particulars of this Adoption in the Adopted Children Register and to issue a Certificate to Gift Inziku reflecting the parental relationship established.
3. The Adoptive parents are at liberty to add their family name to the child's names.
4. This Adoption Order shall be furnished to the Consular Department in the Ministry of Foreign affairs and Permanent Secretary Ministry of Gender, Labour and Social Development.
5. Costs of this Petition shall be borne by the Petitioners.

**GIVEN** under my hand and the Seal of this Honorable Court this **13<sup>th</sup>** day of **JULY, 2018**.

---

**Margaret Mutonyi**

**JUDGE**

**MUKONO HIGH COURT**