

1 **THE REPUBLIC OF UGANDA**
2 **IN THE HIGH COURT OF UGANDA**
3 **HOLDEN AT MUKONO**
4
5 **ADOPTION CAUSE NO. 002 OF 2019**
6
7 **IN THE MATTER OF AN ADOPTION OF ASOBOLA PRAISE AND KWAGALA**
8 **MARTHA BY KATHLEEN SUE BOWMAN**
9
10 **BEFORE HON. LADY JUSTICE MARGARET MUTONYI, JUDGE HIGH COURT**

11
12 **R U L I N G**

13 **Introduction**

14
15 This Petition is brought under Article 139 of the 1995 Constitution of The Republic of Uganda,
16 sections 14, 33 and 39 of the Judicature Act cap 13, sections 3, 44 and 46 of The Children Act
17 Cap 59 and rule 3 of the Children (adoption and children) rules SI.159-1 for the adoption of
18 **ASOBOLA PRAISE** and **KWAGALA MARTH** herein after referred to as **the children** by
19 **KATHLEEN SUE BOWMAN** herein after referred to as **the Petitioner**.

20
21 The Petitioner through her Counsel Isaac Mugume of Mugume & Co. Advocates is seeking for
22 the following orders:

- 23
24 1. **That KATHLEEN SUE BOWMAN** be appointed adoptive parent to **ASOBOLA**
25 **PRAISE** and **KWAGALA MARTHA** and the children be authorized to emigrate
26 with their adoptive parent to the United States of America to fulfill her parental
27 responsibilities.
- 28 2. That the parental rights of having exclusive care, custody, control, parental
29 responsibility for their maintenance, education, medical care, previously with the
30 biological parents be extinguished and vested in the adoptive parents.
- 31 3. That the family name '**Bowman**' be added on to the children's names.

32 4. And such other orders be made as the case may be.

33

34 The Petition is supported by the Affidavits of **Kathleen Sue Bowman** dated 19th March 2019,
35 Katikiro Samuel Kwagala, Martha's maternal uncle dated 25th March 2019, Kiteme Scovia,
36 Asobola Praise's maternal grandmother dated 25th March 2019, Kisaiza Richard the LC1
37 Chairman of Kayira Village dated 25th March 2019, 2 (two) affidavits by Pastor Shiundu John
38 Mukuya of Kidron Children's Home both dated 22nd March 2019 and Lydia Naigaga, the senior
39 probation and welfare officer for Buikwe District dated 22nd March 2019.

40

41 All the deponents of the supporting affidavits appeared before court to confirm the information
42 in their affidavits to ensure the authenticity of the evidence.

43

44 The Petition is for **adoption** of the two children which is defined as ***the creation of a parent –***
45 ***child relationship by a judicial Order between two parties who are unrelated creating a***
46 ***lifelong relationship of parenthood between a child and the adoptive parent.***

47

48 **The Background of the children**

49

50 **Asobola Praise**

51

52 The child is two(2) years and a daughter to Kifuko Byayela Lydia according PE11 which is her
53 short birth certificate issued by Kisozi Sub-county on 18th October 2018. The child's father is not
54 known. Kiteme Scovia (PW2) the mother to Kifuko Byayela informed court that her daughter
55 has 5 children and is mentally ill. Medical evidence was exhibited in court and marked as
56 PE12. The medical report was prepared by the medical personnel from Jinja Referral Regional
57 hospital dated 28th January 2018). The child Asobola Praise was subjected to very harsh
58 conditions because she was born when her mother was a mental lunatic.

59

60 Both the mother and child were then rescued from the harsh environment by Fida her sister and
61 taken to the grandmother's home at Nawantale. The child's mother and grandmother had no
62 means to take care of the baby.

63

64 Since Kifuko was a lunatic, she started loitering around the village with her child.

65 It was at this point in time that the grandmother and the local leaders resolved to remove the
66 child from her and handed her over to Kidron Children's Home for safety when she was barely 2
67 days old.

68

69 The child admission form to Kidron is dated 7th April 2017 and marked PE24.

70 She informed this court that she knew about the petitioner's desire to adopt the child and she had
71 given her irrevocable consent.

72

73 According to John Shiundu of Kidron Children Home, having secured the child's safety, they
74 embarked on the search for the child's father via regular announcements on local radio stations
75 and advertisements in the Newspapers to no avail exhibit PE26 refers. The home went further to
76 carry out a paternity test on kifuko's first husband as per exhibit PE1, but the results turned out
77 negative.

78

79 Kidron Children's Home then applied for and was granted a foster care order for Asobola Praise
80 on 4th July 2017 (attached as Annexure "E") and the child lived at the Home until 14th March
81 2018 when she was placed in the hands of the Petitioner by way of a foster care placement order
82 by Njeru court marked as PE15.

83

84 John Shiundu noted that whereas the child's maternal family loved her and always visited her at
85 the Home, they were unable to take care of her and preferred that she stayed at the home.
86 However, he informed this court that the Home did not provide a permanent place for the
87 children as it is only temporal and transitional. He further told court that the Petitioner lived at
88 his house for three weeks before shifting to the rented place. His visit to her place helped him
89 discover how loving and committed she is to the children. He recommended the child for
90 adoption by the petitioner as the best alternative and only hope for a holistic family life.

91

92 **Kwagala Martha**

93

94 Martha is aged 2 and half years and a daughter to Aliranwa Tabisa of Kayira village, Bupyana
95 Parish, Gadumire sub-county in Kaliro District. Aliranwa Tabisa is mentally ill and suffering
96 from chronic psychosis which state she has been in for the last thirteen years as per the Medical
97 Report dated 6th March 2019 and marked PE2. She had three children earlier on with her husband
98 who abandoned her when she became mentally sick.

99

100 Because of her unstable mind, men took advantage of her and this resulted into a pregnancy from
101 which she gave birth to a baby girl on the 20th day of October 2016. The father is unknown.

102

103 According to Katikiro Samuel Kwagala (PW3) Martha's maternal uncle, due to the inadequate
104 care given to this baby by AliranwaTabisa, she became severely malnourished. Consequently,
105 the LC1 chairman of Kayira village together with the Parish Internal Security officer contacted
106 the Kamuli District Probation Officer who referred the child to Kidron Children's home on 4th
107 January 2017 as per PE23.

108 The Home embarked on the search for the child's father via newspaper advertisements and radio
109 announcements but all efforts did not yield anything. DNA test was conducted on one Silvo
110 Musiyire her former husband who was suspected to be the father but the results turned out
111 negative.

112

113 The child lived at the Home till the 14th of March 2017 when she was handed over to the
114 petitioner by way of a care order marked PE15.

115

116 The child's paternal uncle was in court and he consented to this adoption given that none of the
117 family members has the ability to raise this child.

118

119 **Brief background of the Petitioner**

120

121 Kathleen Sue Bowman is an American citizen, holder of passport No 557189047. She has a
122 Residential address at 44801 Little River Airport Road, Little River, California 95456. While in
123 Uganda, she is residing at Plot 28A Nile Crescent Jinja where she has lived since 2nd February
124 2018. (A copy of her passport and Entry Visa marked **PE4**).

125

126 She is employed as a Yoga Instructor at Yoga Shine of Mendocino and also runs an Air BNB
127 hospitality business back home in the USA.

128

129 She earns an annual income of US\$42,000 (Forty two thousand US dollars). (A copy of her
130 financial statement and recommendation from her employer were exhibited in court and marked
131 **'B'** & **'B₁'**).

132

133 She is not married but has two sons, Dane Bowman aged 32 years old and Jade Bowman aged 11
134 years old whom she adopted from Guatemala.

135

136 She does not have any criminal record in Uganda or anywhere else as per her records from The
137 Federal Bureau of Investigations, California State Police Records, California Child Protective
138 Services,

139 The County of Mendocino Office of the Sheriff- Coroner and Interpol Uganda. (A Copy of her
140 criminal back ground check was admitted in evidence and marked **G₁, G₂& G₃**).

141

142 She has a Home study Report from The Family Network Inc. which recommends her as a
143 suitable adoptive parent for the children. (A copy of the Home Study report is on record marked
144 **'H'**).

145

146 The Probation and Social Welfare Officer of Buikwe has been supervising her during the
147 fostering of the children which she started on the 2nd day of February 2018 and 9th day of March
148 2018 respectively and she is satisfied that she will make a good mother for the girls. (Copies of
149 their Probation reports are on record and marked **'N'** and **'O'** respectively).

150

151 **The Law Applicable**

152

153 **Section 44(1) (b) of the Children Act** confers jurisdiction upon this court to hear adoption
154 application and grant adoption orders, where the petitioner or the child is not a citizen of

155 Ugandan like in the instant case. The children here in are Ugandans while the Petitioner is an
156 American citizen.

157

158 **Issues**

159

160 Two issues were framed for this court's determination:

161 1. Whether the Petitioner is eligible to adopt these children.

162 2. Whether it's in the children's best interests to be adopted by the Petitioner.

163 **Resolution of issues**

164

165 **Issue1; Whether the Petitioner is eligible to adopt these children**

166

167 In his submissions, Counsel for the Petitioner referred this court to **Section 45 (1) (a) of the**
168 **Children Act** which states that; an adoption order may be granted to a sole applicant or jointly to
169 spouses. It further specifies that the petitioner should be 25 years of age and above and not less
170 than 21 years older than the child who is the subject of the Petition.

171

172 He submitted that the petitioner is a female adult aged 60 years who is desirous of adopting two
173 girls aged 2 and 2&1/2 years of age. He submitted that she clearly fulfilled the age difference
174 requirement.

175

176 This court concurs with him on the issue of age.

177

178 **Section 46 as amended by Section 14 of the Children Amendment ACT NO 16 OF 2016** lays
179 out conditions that should be fulfilled by an applicant who is not a citizen of Uganda before
180 he/she can be appointed by court as an adoptive parent for a Ugandan child to wit;

181 (a.) He or she must have stayed in Uganda continuously for 12 months,

182 (b.) Fostered the child for 12 months,

183 (c.) Must not have a criminal record,

184 (d.) Must have a recommendation concerning his or her suitability to adopt a child from
185 their country's probation and welfare office or other competent authority and

186 (e.) He/she should satisfy court that his or her country of origin will respect and recognize
187 the adoption order.

188 Counsel for the Petitioner filed written submissions that have been put under
189 consideration while writing this Ruling.

190

191 From the evidence on record, court observed that whereas KATHLEEN SUE BOWMAN is an
192 American citizen as per her passport No. 557189047 and a resident of 44801 Little River
193 Airport, California 95456, she is currently residing at Plot 28A Nile Crescent Jinja where she has
194 been staying since the 02nd day of February 2018 to date as evidenced by a letter of
195 recommendation from Mr. Kiirya Richard the area LC1 Chairman and her entry visa which
196 commenced on the 1st day of February 2018.

197

198 The evidence on record further proves that the Petitioner has fostered the 2 children since the 2nd
199 day of February 2018 for Asobola Praise and the 9th day of March 2018 for Kwagala Martha,
200 under the supervision of the probation and social welfare officer for Buikwe District .(see PE13
201 and PE15).

202

203 The Petitioner does not have any criminal record both in her Home Country or anywhere else as
204 per the certificate of good conduct from Interpol Uganda (PE8) and a criminal record affidavit
205 and clearance from the county of Mendocino office of the Sherriff- California marked (PE9 and
206 PE10).

207

208 With regard to her suitability to adopt the children, the Petitioner has submitted a report
209 compiled by The Family Network Inc. a Hague Accredited agency which has highly
210 recommended her as a suitable adoptive parent for the children. The same is dated 30th June 2017
211 and marked PE7. In addition, the Probation Officer for Buikwe filed an affidavit on court record
212 to which she attached her report fully recommending the Petitioner as a suitable adoptive parent
213 for the children.

214

215 The Petitioner confirmed to this court that her country of origin would respect this adoption
216 order as has been its practice with all other cases of adoption. She further stated on oath in this

217 court that where she lives back home is very progressive and the people are open minded
218 affirming the safety of the children to this court.

219

220 Court is satisfied that the Petitioner has fully complied with the mandatory requirements under
221 section 46 of the Children Act as amended.

222

223 Under **section 47 of the Children Act**, the consent of the child's parents is necessary if the
224 parents are known, but it may be dispensed with if the parents are incapable of giving it or
225 cannot be found.

226

227 Court observed that the known parents of these children who were present in court are all
228 incapable of consenting to this process due to their mental impairment.

229

230 To confirm that the children are not just being trafficked but belong to a family, their closest
231 relatives, Scovia Kiteme (maternal grandmother) and Batyo Bwebali Fida (maternal aunt) have
232 given their irrevocable consent to this adoption for Asobola Praise while Katikilo Samuel
233 (maternal uncle) has consented for Kwagala Martha. This was done after duly explaining the
234 effect of this adoption to them by both counsel and this honorable court.

235

236 In view of the evidence on record and interaction with the applicant and the relatives of the
237 children who testified on oath in this court, I am satisfied that the Petitioner has fulfilled all the
238 requirements and legal conditions set forth for an inter-country adoption under the Children's
239 Act as amended.

240

241 **Issue 2; whether it is in the children's best interests to be adopted by the Petitioner.**

242 **Section 3 and the first schedule** of the Children Act provides that the welfare principle shall be
243 of paramount consideration when making decisions concerning children and further that the
244 court shall in particular have regard to the ascertainable wishes and feelings of the child
245 concerned considered in light of his/her age and understanding; the child's physical, emotional
246 and educational needs; the likely effect of any changes in the child's circumstances; the child's
247 age, sex, background and any other circumstances relevant in the matter; any harm that the child

248 has suffered or is at the risk of suffering; and where relevant, the capacity of the child's parents,
249 guardians or others involved in the care of the child to meet his/her needs.

250

251 The Petitioner as evidenced in her affidavit and testimony in court has lived with the children
252 since February 2018 for Asobola and March 2018 for Kwagala having taken them from Kidron
253 Children Home a child care facility. She has since been solely responsible for all their personal
254 basic, material, physical, spiritual and emotional needs and growth.

255 Whereas the children have relatives, it is apparent that their relatives preferred to hand them over
256 to the institution as a safe haven for their growth as compared to their homes as they were
257 financially incapable of raising them.

258 The intention of child institutions is to keep the vulnerable children temporarily with the view of
259 re-uniting them with their biological family. Where there is no close family member willing to
260 take on the child, the alternative is to identify willing persons to take over parental responsibility
261 through adoption process to provide a family for the children as this is the most ideal for the
262 normal growth of every child where they can be given parental love, guidance, protection and
263 affection.

264 The mothers of the children are mentally challenged and impaired. They are not capable of
265 raising these children as they are very vulnerable themselves.

266 The children were handed over to Kidron at a very tender age and the relatives are not only
267 unwilling to take on the children, but lack the financial ability to provide the basics for the
268 children.

269 This court takes cognizance of the decision in **Deborah Joyce Alitubera Civil Appeal No.70 of**
270 **2011** wherein the court recognized the option for the child to live within a nurturing family
271 which is ready to provide him/her with basic needs of life as opposed to an institution that is
272 incapable of providing the personal care that a child needs to thrive physically, mentally, and
273 emotionally. The Court noted that when children live in institutions, they suffer a range of health
274 and developmental problems and risk lifelong physical, mental and emotional problems.
275 Emphasis mine.

276 Court has observed that the children who are the subject of this Petition are infants and thus very
277 vulnerable and therefore are in need of care and love in a home setting as opposed to an
278 institution.

279 This Court observed the Petitioners' conduct with the children and noted that they had a strong
280 bond of love and the Petitioner was ready to do all it takes to provide and care for the children.
281 She has already done a good job in raising them physically, mentally and emotionally. The
282 children looked very healthy and happy.

283 While on oath, the Petitioner told court that;

284 ***“I have always wanted to have many children but I did not get a chance until now...
285 when I entered the second phase of my life, I thought to myself, what do I do. The
286 answer came to me “Be a mother again” I love children. I look at them as a gift.”***

287 When asked by court how she intended to take care of the children's educational needs. She had
288 this to say;

289 ***“My adopted son Jon is in a very wonderful school and I will also take them there. I
290 own my own house with no mortgage running. I have attached my financial statement
291 and can look after them with ease.”***

292 Her Financial statement indicating that she earns \$42000 annually and with a net worth of
293 \$1,804,000 is marked PE5.

294 She further told court that she had arranged with her friends Marco and Susannah to help her
295 children incase anything happened to her. And that further her eldest son was soon getting
296 married and he was very interested in taking care of the children. She further expressed interest
297 in the Ugandan culture which she promised to keep alive as she felt it important for the children
298 to know their origin.

299 Having the welfare principal in mind which includes both physical and emotional welfare and in
300 view of the above submissions, this court notes that the children are now solely and exclusively
301 dependent on the Petitioner whom they have lived to know and love as a mother. In these
302 children too, the petition has found a fulfilment of her dream to expand her family. Separating

303 them now or denying the petitioner the opportunity to love, raise and nurture these children
304 would amount to cruelty of the highest order and a violation of their universal right to belong to a
305 family.

306 Court takes serious note of the fact that the Petitioner left the comfort of her home and, country,
307 has endured the separation from her immediate family, friends and clients, to come and live in
308 Uganda for more than a year, in order to qualify to take the two little girls with her. That sacrifice
309 is akin to the love of Jesus Christ for humanity for those who subscribe to Christianity. It is a
310 sign of genuine love far from counterfeit. Denying the children the opportunity to be loved and
311 raised by such a loving person would never be in the interest of the children.

312 This court is therefore convinced that there would be no better alternative than for this court
313 which is a court of justice to cement the already formed bond between these children and their
314 mother.

315 Adopting them at this stage is in their best interest.

316 In the result, the Petition is allowed with the following Orders:

- 317 1. **KATHLEEN SUE BOWMAN** is appointed the adoptive parent of **ASOBOLA**
318 **PRAISE** and **KWAGALA MARTHA** and the relationship of parent and children is
319 hereby established with all rights and privileges incident thereto including the right of
320 inheritance of the property of the adoptive parent.
- 321 2. The Registrar General of Births and Deaths is hereby directed to make an entry recording
322 the particulars of this Adoption in the Adopted Children Register and to issue Certificates
323 to **ASOBOLA PRAISE** and **KWAGALA MARTHA** reflecting the parental relationship
324 established.
- 325 3. The Adoptive parent is at liberty to add her family name **BOWMAN** to the children's
326 names.
- 327 4. This Adoption Order shall be furnished to the Consular Department in the Ministry of
328 Foreign affairs and Permanent Secretary Ministry of Gender, Labor and Social
329 Development.
- 330 5. Costs of this Petition shall be borne by the Petitioner.

331

332 **GIVEN** under my hand and the Seal of this Honorable Court this **18th** day of **JUNE 2019**.

333

334

335 _____

336 **Hon. Lady. Margaret Mutonyi**

337 **RESIDENT JUDGE**

338 **MUKONO HIGH COURT**