

THE REPUBLIC OF UGANDA

IN THE HIGH COURT UGANDA

AT MBALE

HCT-04-CV-ADOPTION CAUSE NO 1-2000

CONSOLI GIULIANO.....APPLICANT

VERSUS

SILICA NADIN.....RESPONDENT

BEFORE: THE HON. MR. JUSTICE D.N. MANIRAGUHA

RULING

This is a petition jointly filed by two spouses seeking for an adoption order in respect of the child Silvia Nadin. These petitioners are man and wife legally married in Moroto Diocese, Namalu Catholic Mission vide Certificate of marriage No 116-of 1987.

The first petitioner Mr. Consoli Guiliano is an Italian Citizen who first arrived in Uganda on 26th September, 1984 and has continuously stayed in Uganda at Nakuyon village Loperot Parish. Namalu sub-county. Chewki County, Moroto District to the present day.

The wife Anne Lomise Consoli is of the same address, an African Uganda Citizen who stayed in Uganda since her birth on 20/11/1963 in Nabilatuk village, Pian County, Moroto District.

The petition was brought under the Children Statute 1996. The Adoption of Children Rules, 1997.

The petitioners have annexed affidavits to the effect that they were married at Namalu Uganda martyrs Church on 26th June, 1987 and attached the Certificate of marriage.

They have stated their ages as 43 and 37 years respectively and supported this with “B and C” respectively.

It is further averred that 2nd petitioner Anna Lomise Consoli is related to the child as her step mother.

The first petitioner has produced a document to support his averment that he has no criminal record anywhere, so has his spouse.

The two have been fostering the child since 13th February, 1997 when her late mother Mary Logit died in the course of giving birth to the child in Amaler sub dispensary. The child's father requested Mr. Consoli to foster the child as he himself was unable to look after her due to economic hardships. To date the child has lived and continue to live with the petitioners.

This child is now aged 3 years having been born on 13th February, 1997 as evidenced by her birth certificate.

The first petitioner is a coordinator of a Non-Governmental organization known as DSVI-Service Voluntary International, while the 2nd petitioner is a house wife.

The two have been fostering the child since birth under the supervision of Oryono Godfield Omonda, a probation and social Welfare officer. His report is attached to the petition and he was present when the court needed him in this matter.

The petitioners in addition have obtained the consent of three immediate relatives of the child namely peter Lokwa, her father, Lochpa, John her uncle, and Kanyira Tereza, her aunt. The pertinent documents are on record.

In addition support was obtained from Hon. Mr. Peter T. Lokeris the Minister of State Ikaramoja, a born of the district, and the same constituency of Chekwi County in particular.

He fully endorsed the adoption order being made and he praises the petitioners for what they have done for the child ever since its birth. Relying on the above, the petitioners seek for an adoption order.

The issues for this court to decide are:

1. Whether the two petitioners can adopt the infant.
2. Whether the requirements of the law have been complied with.

3. Whether it is in the interests of the infant to make the adoption order.

Section 45 (1) (b) of the Children Statute provides that “An application for an adoption order may be made to the High Court where the child or the applicant is not a citizen of Uganda, and the Court may, subject to the provisions of this Statute, grant the application.”

Thus according to that provision even the first applicant qualifies to adopt the child subject to other requirements being fulfilled. So both applicants do qualify to adopt the child.

On the second issue, where the applicant is not a citizen of Uganda he has to fulfill the requirements of Section 47 of the Children Statute.

I have looked at the various documents in support of this application and have found that the first applicant has fulfilled the requirements.

Firstly he is 43 years old, so more than 21 years older than the child. The second applicant also fulfills this condition being 37 years old. The two spouses are applying jointly. Both have fostered the child since it was born now for forty two months under the supervision of the Probation and social Welfare officer who was present in Court and his report is on record. Mr. Peter Lokeris’ letter shows added support of a local leader.

Other requirements fulfilled are that the 1st applicant has stayed in Uganda for 16 years now. He does not have any criminal record. He has been recommended as to his suitability to adopt the child by the Italian ambassador to Uganda on 6/09/2002 as per document sent to me duly stamped and signed.

By the same document I have been assured, and I am satisfied, that his country of origin (Italy) will respect and recognize the adoption order. So I accept the first applicant as suitable to adopt the child. The necessary consent by the father of the child was obtained so also of close relatives. As the child is too young to be able to give her view on this, that requirement is duly dispensed with.

Thus I am fully satisfied that the two applicants [spouses] have satisfied the necessary requirements under the law.

Lastly, whether the order would be in the best interests of the child. Under Section 4 of the Children Statute and the first schedule thereto, the guiding principles in considering the child's right her welfare is of the paramount consideration.

This generally includes the child's physical, emotional, and educational needs.

Looking at the circumstances of this case where from the date of its birth the child has been in the hands of the applicants who have brought her up carefully, her welfare would best be catered for if the adoption order were made as no other person is able to take over the responsibility over her.

Consequently order that the petitioners be and are hereby jointly granted an order of adoption of the child Silvia Nadin. The applicants shall meet the costs of application.

D.N. Maniraguha

Judge

22/9/2000