

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA  
AT MBALE**

**HCT-04-CV-AC-0001-2013**

**THE MATTER OF LUNYOLO BRIGATTE (CHILD)  
AND  
IN THE MATTER OF AN APPLICATION FOR LEGAL GUARDIANSHIP  
BY CORIOVA VERA AND RADEK CORI**

**BEFORE: THE HON. MR. JUSTICE MUSOTA STEPHEN**

**RULING**

This is an application for Adoption brought under the whole Children Act by two applicants who are citizens of the Czech Republic to wit Coriova Vera and Radek Cori.

The applicants are said to be a married couple. They are represented by M/s Mbale Law Chambers. It is revealed in a perfunctorily drafted petition that the 1<sup>st</sup> applicant **Coriova Vera** first arrived in Uganda on 13<sup>th</sup> August 2012 and has since stayed at Bubetsye village, Busoba county. The 2<sup>nd</sup> applicant **Radek Cori** has never been to Uganda.

The 1<sup>st</sup> applicant is said to be a nurse and **Radek Cori** a construction worker. Obviously the two are not related to the child **Lunyolo Brigitte** who is now aged 8 years.

Both applicants have attached recommendations concerning their suitability to adopt the child in question comprised in annexures F & G respectively. It is

further revealed that **Lunyolo Brigatte** has not been the subject of an adoption order and has been fostered by the petitioners since August 20<sup>th</sup> 2012 under the supervision of the Senior Probation and Social Welfare Officer Mbale as revealed in annexure 'Y' to the petition.

According to the probation officer the child lives with her uncle **Poolo Davis** to whom she explained the implications of adoption.

That the child has been under the care of the uncle since a tender age of 3 years but the uncle has meager resources to effectively provide for his large family. That other family members have no objection to adoption of this child and the applicants have been sending help to the child through **Pastor Nashangi David** of Nabumali Presbyterian Church for education, medical and clothing.

In his submission, **Mr. Wabwire** who represented the applicants reiterated the contents of the application and said this application has been brought in accordance with the law and is in the interest of the child.

I have considered this application as a whole and the submission by learned counsel for the applicant. I have also considered the law applicable. This application falls under inter-country adoption provided for under S.46 of the Children Act. Under the said law it is enacted that:

- (1) A person who is not a citizen of Uganda may in exceptional circumstances adopt a Ugandan child if he or she
  - (a) has stayed in Uganda for at least three years.
  - (b) has fostered the child for at least thirty six months under the supervision of a Probation and Social Welfare officer;

(c) does not have a criminal record.

(d) has a recommendation of his or her suitability to adopt a child from his or her country's probation and welfare office or other competent authority; and

(e) has satisfied court that his or her country of origin will respect and recognize the adoption order.

When I related this application to the law applicable, I was not convinced that the applicants herein satisfy the legal requirements to warrant grant of this application. No special circumstances were pleaded to justify grant of this order. The child in question has been infact staying with her uncle since the age of 3 in a large family and is now said to be 8 years although learned counsel put her age at 5 years. Assistance has been given by the applicants through the Presbyterian Church of **Pastor Nashangi David** all along. Changing the status of this child at that age may not be in her best interest.

Secondly, the applicant has not stayed in Uganda for 3 years or fostered the child for at least 36 months under the supervision of a Probation and Social Welfare Officer as required by the law.

According to information on record, the 1<sup>st</sup> applicant first arrived in Uganda on 13<sup>th</sup> August 2012 but there is no evidence that she applied and was granted a foster care order for **Lunyolo Brigatte**.

It is apparent that the 2<sup>nd</sup> applicant **Radek Cori** has never been to Uganda. The law does not recognize adoption by proxy as the applicants want this court to do. This is unacceptable and is contrary to the law.

I was not satisfied that the consent given for adoption was sought after a thorough explanation of the implications of an adoption order was made to the relatives because the relatives expect the child to go and study, get a job and use the sources to assist the family and the clan. These family wishes may not be fulfilled if this order is given.

I was equally not satisfied that if this order is made it will be respected by the receiving county because no legal backing is given to support this assertion. To compound it all, the translations which accompanied the application are not clear or straight forward and are not authenticated.

To say the least, these documents are incoherent to give a comprehensive background information of the applicants.

For the reasons I have given herein above, I am unable to grant this application. It will stand dismissed and the applicants shall meet the costs of this application.

I so order.

**Stephen Musota**

**JUDGE**

**20.03.2013**

