

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT GULU
HCT - 02- CV - MC - 0057 - 2014
ADOPTION CAUSE NO. 57 OF 2014
IN THE MATTER OF S.45 AND 46 OF THE CHILDREN ACT
IN THE MATTER OF APIYO GRACE (CHILD)
AND
IN THE MATTER OF PETITION FOR ADOPTION BY BROOKE BOCAST

BEFORE: HON. LADY JUSTICE MARGARET MUTONYI

RULING

This is a petition for Adoption brought under the Provision of S. 45 and S.46 of the Children Act Chapter 59 laws of Uganda by Ms. Brooke Bocast residing at Herbertine Apartments No. B9 Mukubwa Zone Makerere 1 Parish, Kawempe Division, Kampala while in Uganda and at 13570 Macbeth Street Medean VA 22.02 in the United State of America.

The Applicant is represented by Opiyo Nicholas of Tuhimbise & Co. Advocates, of P.O. Box 36340, Kampala.

The petition is also brought under Article 139 of the Constitution of the Republic of Uganda, S. 14, 33, and 39 of the Judicature Act, and S. 98 of the C.P. A. (Civil Procedure Act)

The petition seeks the following orders.

- a. That an order for adoption of the Child Apiyo Grace by the Petitioner Brooke Bocast be made in pursuance of the Children Act with all the necessary directions.
- b. That the costs of this petition be provided for
- c. Such further orders as the nature of the case may require be made.

The petition is based on many grounds but most especially the following

1. The petitioner is not married and does not have any child of her own.
2. The child is one of the triplets born to Alengo Justine and Acan Alice both peasant farmers who are unable to take care of the child.
3. The petitioner was granted legal guardianship of the said child Apiyo Grace by this Honorable Court vide Gulu Family Cause No. 84 of 2013 and she is in custody of the child.
4. The petitioner solely contributes towards the support of the child and there are no other persons liable to contribute to the support of the child.

The petition is supported by the affidavit of the petitioner, the social enquiry report by the senior Probation and Social Welfare Officer of Amuru District Mr. Komakech Santo, the affidavit and consent of Acan Alice the mother of the infant, Jonathan Zev. Landa the legal guardian of Adoch Nia and Achen Penina the sibling of Apiyo Grace having been born as triplets and are now living in New York City, USA and a friend to the petitioner.

The above mentioned documents are on record and attest to the following facts.

The child Apiyo Grace is about three years old now having been born on 24-09-2011 and was born as triplets with Adoch Nia and Achen Penina who are now living in New York city.

The parents of the infant particularly the mother could not afford to look after the triplets. She decided to give them away under legal guardianship.

The father of the infant denied responsibility and is not interested in whatever happens to the children.

The petitioner took on the child when she was five months old and has taken good care of her all these time.

The mother of the infant could not take care of her child even after the other two were removed from her. She willingly surrendered her child of 5 months old.

Two issues emerge from this petition.

1. Whether the grant of this petition is in the best interest of the child Apiyo Grace
 2. Whether the applicant is a suitable adoptive parent for the child.
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1. Whether the grant of this petition is in the best interest of the child Apiyo Grace.

Section 3 of the Children Act provides for the guiding principles in making any decisions on children and among these is the Welfare Principle. In the case of **Deborah Joyce Alitubeera Civil Appeal No. 70 of 2011** which is a leading case on this issue, the court took the Welfare Principle into account and gave it the attention it deserves.

It was reemphasized that the Welfare Principle is the paramount consideration in making decisions in matters concerning children.

It is also a well settled principle of practice that custody of a child can be removed from the parent if the parent does not meet the welfare principle of the child.

The child Apiyo Grace has lived with the petitioner from the age of 5 months. She does not know any other person as her mother. She knows the petitioner. The biological mother has become a stranger. Her condition of being in dire need has not changed.

Her siblings were taken to the USA and are living happily. The petitioner in her affidavits has travelled to the USA with a child to enable her interact with her siblings.

She intends to provide the best for the child. She loves the child as if she were the biological mother if not more than the biological mother.

She is 33 years old and capable of being a mother to the infant. She intends to move out of Uganda having gotten another job, and wishes to move on with her baby girl. The Probation and Social Welfare Officer who followed up the legal guardianship has made a positive report about the welfare of the child.

In courts view, considering the welfare principle of the child, it is only the petitioner who can adequately take care of the child's needs. She has exposed the child to good living. She has bonded so well with the child to an extent that she does not know any other person as mother.

I am therefore resolving the first issue in the affirmative.

2. Whether the petitioner is a suitable adoptive parent for Apiyo Grace.

Section 45(1) of the Children Act states that an adoption order may be granted to a sole Applicant. Where the applicant has attained the age of twenty five years and is at least 21years old than the child. I have left out the issue of spouses because the applicant is a single person. She is not yet married. She is aged

33 years and therefore above 25 years and more than 21 years older than the infant. She is actually 30 years older than the infant.

In light of the fact that the applicant is an American citizen, this court treats this matter as one which falls under S.46 of the Children Act which provides for inter century Adoption. The section requires the applicant to fulfill the following conditions

- a). staying in Uganda for atleast three years
- b). fostering the child for atleast 36 months under the supervision of the Probation and Social welfare officer
- c). evidence of lack of a criminal record.
- d). a recommendation concerning her suitability to adopt a child from her country's Probation and Social Welfare Officer or any other competent authority and courts satisfaction that the country of origin will respect and recognize the adoption order.

Apart from fostering the child for 36 months, the applicant has fulfilled all the other legal requirements. She is however faced with taking on another job outside the jurisdiction of Uganda and is desirous of going with the infant. She is the only parent the infant knows.

This is a case that falls under exceptional circumstances because she has actually fostered the child for 29 months. It is in the best interest of the child that is paramount. It would not serve the

best interest of the child if the applicant is subjected to waiting until the end of the 36 months. This would affect the welfare of the child.

I have carefully perused the documents in support of this petition. The petitioner was appointed legal guardian of the child and was required to come back to court for other orders when necessary. The petitioner does not have any criminal record in the USA or here in Uganda. She has a good financial standing and able to provide a home, education, medical insurance and above all tender loving care for the child.

She has exhibited a high degree of responsibility and desire to see the triplets grow while knowing each other. This is in the best interest of the child and can only be done by a person suitable to be a parent.

I therefore answer the second issue in the affirmative.

Consequently I grant the petition by Brooke Bocast to be appointed the adoptive parent of the child Apiyo Grace and make these orders.

1. The child Apiyo Grace is declared the adopted child of Brooke Bocast and the relationship of parent and child is hereby established with all rights and privileges incident thereto including the right of inheritance.
2. The parental rights of all others with respect to the child not previously terminated are hereby terminated.

3. The petitioner Brooke Bocast shall have exclusive care, custody and control of the said child free from claims or hindrances of all others and shall be responsible for her education, maintenance and support.
4. The child shall maintain her two names of Apiyo Grace but the petitioner is at liberty to add her family name.
5. The Registrar General of Births and Deaths is hereby directed to make an entry recording this adoption in the Adopted Children Register and issue a certificate to Brooke Bocast reflecting the names and parental relationship established herein.
6. It is further directed that this adoption order be furnished to the consular Department in the Ministry of Foreign Affairs Kampala.

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Mutonyi Margaret

Judge

24-09-2014

30/09/2014

Opiyo Nicholas for petitioner present.

Petitioner absent

Anna Alengo – court clerk

Court: Judgment /Ruling delivered in the presence of the above.

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Mutonyi Margaret

Judge

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

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ORDER

THIS APPLICATION is coming up for final disposal this **30th** day of **September, 2014** before her **Lordship Hon. Lady Justice Margaret Mutonyi**, Judge of the High Court at Gulu, in the presence of **Nicholas Opiyo Esq.** Counsel for the Petitioner and in the absence of petitioner.

IT IS HEREBY ORDERED that:-

1. The child Apiyo Grace is declared the adopted child of Brooke Bocast and the relationship of parent and child is hereby established with all rights and privileges incidental thereto including the right of inheritance.
2. The parental rights of all others with respect to the child not previously terminated are hereby terminated.
3. The petitioner Brooke Bocast shall have exclusive care, custody and control of the said child free from any claims or hindrances of all others and shall be responsible for her education, maintenance and support.
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5. The Registrar General of Births and Deaths is hereby directed to make an entry recording this adoption in the Adopted Children Register and

issue a certificate to Brooke Bocast reflecting the names and parental relationship established herein.

6. It is further directed that this adoption order be furnished to the consular Department in the Ministry of Foreign Affairs Kampala.

GIVEN under my hand and the Seal of this Honorable Court this **30th** day of **September**, 2014.

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MUTONYI MARGARET
JUDGE

FAMILY CAUSE NO. 085 – 2013

HCT-02-CV- MA – 0085/2013

IN THE MATTER OF AN APPLICATION FOR ADOPTION BY PAOLO MICHELE CORNA AND ANDERU JACKLIN

AND

IN THE MATTER OF ANGELICA AGNESE CORNA (AN INFANT)

BEFORE HON. LADY JUSTICE MUTONYI