

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
ADOPTION CAUSE NO 205 OF 2014
IN THE MATTER OF THE CHILDREN ACT CAP 59
AND
IN THE MATTER OF STELLA KATE KIRABO AN INFANT
AND
IN THE MATTER OF AN APPLICATION BY JEFF NEIL BORCHERT
AND KATIE ANN BORCHERT TO BE APPOINTED ADOPTIVE
PARENTS OF THE SAID MINOR
BEFORE LADY JUSTICE PERCY NIGHT TUHAISE
RULING

This is a petition for adoption of a minor, **Stella Kate Kirabo Borchert**, brought by **Jeff Neil Borchert** and **Katie Ann Borchert**. The petitioners seek orders that an order for the adoption of **Stella Kate Kirabo Borchert** by the petitioners be made under the Children Act with all the necessary directions; and for such further orders in the premises as it deems fit.

The petition is supported by the affidavits of the petitioners, **Jeff Neil Borchert** and **Katie Ann Borchert** and also of **Victoria Tendo**, and **Maureen Orogot Aido**. In addition, this court interviewed on oath the two applicants, and the Officer in Charge of Orphans and Vulnerable Children, Kampala City Council Authority (KCCA), **Zaina Nakubulwa**. Learned Counsel Dorothy Kisaka for the petitioners filed written submissions.

The background is that the child, **Stella Kate Kirabo Borchert** was rescued from a pit latrine by police in Bujjuuko village, Buloba sub county, Wakiso district. She was admitted in Mulago Hospital on 28/06/2011 and eventually recommended for placement in a Babies Home by the hospital. Malaika Babies Home took on the child vide a care order of 16/08/2011 granted by the Nakawa Family and

Children's Court. Subsequently, after attempts to locate the child's parents proved futile, Malaika Babies Home placed the child with the petitioners who eventually obtained a foster care order and a guardianship order in respect of the child on 17/02/2012 and 27/05/2013 respectively. The application was addressed by this court along the following issues:-

1. Whether the High Court is seized with the jurisdiction to entertain the matter.

Section 44(1)(b) of the Children Act 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 court may, subject to the said Act, grant the application. This court therefore has the jurisdiction to hear and determine this application.

2. Whether the petitioners qualify to be appointed the adoptive parents of the child.

Section 45(1)(a) of the Children Act provides that an adoption order may be granted to a sole applicant or jointly to spouses where the applicant or at least one of the applicants has attained the age of twenty five years and is at least twenty one years older than the child. Section 46 of the same Act provides that a person who is not a citizen of Uganda may, in exceptional circumstances, adopt a Ugandan child if he/she has stayed in Uganda for at least three years; has fostered the child for at least thirty six months under the supervision of a PSWO; does not have a criminal record; has a recommendation concerning his/her suitability to adopt from his/her country's PSWO or other competent authority; and has satisfied the court that his/her country of origin will respect and recognize the adoption order.

The adduced evidence shows that petitioners **Jeff Neil Borchert** and **Katie Ann Borchert** are citizens of the United States of America (USA). They are married to each other. **Jeff Neil Borchert** is aged 44 years and nine months. His wife, **Katie Ann Borchert** is aged 40 years and one month. This is adduced from copies of their passports annexed to their respective affidavits. The child **Stella Kate Kirabo Borchert** is revealed by the copy of her birth certificate on the court record to have been born on 26/06/2011. She is currently aged three years and nine months. This makes each of the applicants, who are above 25 years to be more than 21 years older than the child. Thus the applicants fall within the age requirements spelt out under section 45(1)(a) of the Children Act.

The applicants are citizens of the USA. This places them within the legal requirements of section 46 of the Children Act, being non citizens of Uganda. **Jeff Neil Borchert** is employed as a Health Scientist in the Flea – borne Diseases Activity, Bacterial Diseases Branch Division of Vector Borne Diseases, United States Centres for Diseases Control in Uganda, as shown by the Personal Data Information Form prepared by **Orogot Maureen** of M/S Child I Foundation. **Katie Ann Borchert** is a stay at home mum who also volunteers with women in Wabigalo Kibuli as shown by the supporting affidavit and her sworn testimony to this court. Both petitioners are stated to be in good health.

The affidavit evidence on record shows that the petitioners started residing in Uganda in 2003. They first met Kirabo when they visited Malaika Babies Home in August 2011. They subsequently obtained a Foster Care Order issued by the Magistrates Court Makindye on 17/02/2012, and later, a guardianship order from this court issued on 27/05/2013, in respect of the child whom they have since been fostering. Thus, though the petitioners are not citizens of Uganda, they have stayed in Uganda for more than three years, and have fostered the child for more than thirty six months under the supervision of a PSWO.

There is evidence that the applicants have been living with the child as a family. The certificates of good conduct by the National Central Bureau of Interpol Kampala, which are on the court record, show that the petitioners do not have a criminal record. The Officer in Charge of Orphans and Vulnerable Children, Kampala City Council Authority (KCCA) **Zaina Nakubulwa**, in her report on record, and her affirmed oral testimony to court, has recommended the applicants as suitable persons to adopt the child. The petitioners have also availed a copy of their report as legal guardians of the child, to the effect that the child relates well with all the family members, that her health has improved, and that they have not had many challenges or problems with the child. This makes them fully compliant with the requirements in section 46 of the Children Act.

Under section 47 of the Children Act, the consent of the child's parents is necessary if the parents are known, but it may be dispensed with if the parents are incapable of giving it. The adduced evidence shows that the child's parents are unknown. The child was rescued from a pit latrine and her mother has not come up

to claim her. In this case the parents' consent will be dispensed with since the child's parents are not known.

The petitioners therefore qualify to be appointed the adoptive parent of the child.

3. Whether the application is in the best interests of the child.

Section 3 and the first schedule of the Children Act provide that the welfare principle shall be of paramount consideration when making decisions concerning children. The court shall in particular have regard to the ascertainable wishes and feelings of the child concerned considered in light of his/her age and understanding; the child's physical, emotional and educational needs; the likely effect of any changes in the child's circumstances; the child's age, sex, background and any other circumstances relevant in the matter; any harm that the child has suffered or is at the risk of suffering; and where relevant, the capacity of the child's parents, guardians or others involved in the care of the child in meeting his/her needs.

The evidence adduced before this court shows that the child's parents are not known. The petitioners have taken actual custody of the child through a Foster Care Order and a Guardianship Order. The child could not talk for herself because court considered her to be of tender age. The petitioners, in addition to their sworn affidavits, stated to this court on oath that Stella has been in their family since 2011 where she lives with them and their other two adopted children, a brother called Osobie Miles Kanweaye and a sister called Fatu Wanda Kanweaye. The petitioners plan to raise the child as their daughter and give her education. Their older adopted children are already teaching and protecting her and they have a good time together. The petitioners and the three children live as a family at plot 7497 Kironde Road, Muyenga, Kampala District. The petitioners each stated that they were neither given nor did they give anything as consideration to adopt the child.

The foregoing circumstances, in my opinion, are exceptional circumstances rendering the child **Stella Kate Kirabo Borchert** whose parents or relatives are not known, to be very vulnerable and in need of a home, care and love. The child does not have a place to call home other than that of the petitioners' place. The petitioners are availing the child all necessities of life including future education opportunities.

The Constitution of Uganda and the Children Act stipulate that a child has a right to have a home and be cared for. The petitioners are able and willing to avail such home to the child, having already fostered her for more than three years. They are already living with the child as a family, first, under a Foster Care Order, and later, under a guardianship order. In that respect I would agree that this application is in the best interests of the child, and that the said child be adopted by the petitioners who are already her legal guardians. The Policy Memorandum of 06/11/2012 from the US Citizenship and Immigration Services availed to court by the petitioners indicates that the petitioners' home country the USA is ready to respect the adoption order if granted.

In the circumstances, based on the adduced evidence and the relevant laws and for reasons given, I am satisfied that the petitioners have complied with the legal requirements to adopt the child, and that the adoption will be in the best interests of the child.

It is accordingly ordered as follows:-

- i) An order for the adoption of **Stella Kate Kirabo Borchert** be made to **Jeff Neil Borchert** and **Katie Ann Borchert**.
- ii) The Registrar General of Births and Deaths shall make an entry recording this adoption in the Adopted Children Register.
- iii) The adoption order shall be furnished to the Consular Department in the Ministry of Foreign Affairs Kampala.
- iv) Costs of the petition shall be provided for by the petitioners.

Dated at Kampala this 2nd day of April 2015

Percy Night Tuhaise

Judge.