

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

FAMILY CAUSE NO. 053 OF 2016

**IN THE MATTER OF A PETITION BY ALICIA ANNA CHRISITNE
VAN HUIZEN SHINSKA AND RYAN CHRISTOPHER SHINSKA
TO ADOPT EKISA ALICE AND BIZIGO JAMIL-INFANTS**

**RULING
BEFORE HONOURABLE LADY JUSTICE EVA K. LUSWATA**

Alicia Anna Christine Van Huizen Shinska and Ryan Christopher Shinska (herein after the petitioners), nationals of Canada and the United States of America (USA) respectively, are a married couple and residents at Plot 2A Circular Road, Rippon Falls Village, Old Boma Parish, Central Division, Jinja District. They have moved this Court in an *ex parte* application under the Judicature and Children (Amendment) Acts, seeking an order for the adoption of **EKISA GRACE** and **BIZIGO JAMIL** (hereinafter jointly referred to as the children) with an additional order for costs.

The application is supported by the applicants' affidavits dated 18/10/2016, and that of Eunice Matte a social worker with Ekisa Ministries International (herein after referred to as Ekisa), a non governmental organization. The grounds advanced for the application are briefly that;

1. Although the children have one known biological parent, it is the applicants who have since September

2015, been meeting their material, physical, emotional, medical and spiritual needs.

2. That the one known biological parent suffers from a mental and neurological disability and as such, socially and physically unable to take care of the children.
3. The applicants have received adequate recommendations to adopt the children and in addition, are in possession of statutory orders approving them as suitable foster parents for both children
4. The applicants have no criminal record and are financially stable with capacity to meet the children's needs
5. The applicants are prepared to respect any conditions the Court may impose upon making the adoption order.

Both applicants and the children, as well as Eunis Matte, were present at the hearing. Samuel Ojambo, the applicant's counsel, made brief oral submissions that he followed up with written submissions filed on 4/6/2018. Those and the responses of those present at the hearing of 19/10/2016 will be considered in my ruling.

It is stated in the application that, the child EKISA GRACE (herein after shortened to Grace) is: -

- (a) An infant of the male sex
- (b) Whose biological mother is alive but mentally ill and the father is unknown
- (c) Is a citizen of Uganda
- (d) Born on 29/9/2011 and therefore now aged six years and eleven months (A birth certificate record dated 12/8/16 issued by Jinja Referral Hospital, is available)
- (e) Currently in the custody of the petitioners
- (f) Owns no real estate property
- (g) No known persons are willing to contribute to his support.

It is also stated in the petition that, the child **BIZIGO JAMIL** (herein after shortened to Bizigo) is: -

- (h) A child of the male sex
- (i) Whose biological mother is alive but mentally ill and the father is unknown
- (j) Is a citizen of Uganda
- (k) Born on 26/12/2008 and therefore now aged 9 years and eleven months(A birth certificate record dated 12/8/16 issued by Jinja Referral Hospital, is available)
- (l) Currently in the custody and care of the petitioners
- (m) Owns no real estate property
- (n) No known persons are willing to contribute to his support.

It is further stated that the children have not previously been the subject of any adoption order and that the petitioners have not received or agreed to receive any payment or other reward in consideration of the adoption. It is proposed that the applicants meet the costs of the petition.

1. The Law:

According to Section 4 of the Children Amendment Act 2016 (hereinafter referred to as the Act), every child has the right to stay with their parents or guardians. However, the same Act allows for substitute care when the circumstances require; such substitute care would include adoption. See for example, **Hon. Chigamoy Owiny Dollo In the matter of David Twesigye (an infant) and in the matter of an Application by Dawn Pittman and Dustin Pittman HCMA No. 0004 of 2008.**

In his submissions, counsel did relate quite well, the current law on adoption: -

It is provided in Section 3 of the Act that;

“(1) The welfare of the child shall be of paramount consideration whenever the state, a court, a tribunal, a local authority or any person determines any question in respect to the upbringing of a child, the administration of a child’s property, or the application of any income arising from that administration.

There is no universal definition of welfare. However the definition given by the court in **JVC (1970) AC 668** best captures the provisions of our current legislation.

“when all relevant facts, relationships, claims and wishes of parents, risks, choices and other circumstances are taken into account and weighed, the course to be followed will be that which is most in the interest of the child...”

Therefore the Court is mandated to consider each case on its facts, bearing in mind the best interests of the child(ren) involved.

Two crucial points stand out in our current law on adoption. Firstly, under all circumstances, the welfare of the child shall be paramount before any consideration is made by this court to allow an adoption. This principle has been well followed by our courts. See for example **Deborah Alitubeera Civil Appeal No. 70/2011** and **Re AM Adoption Cause No. 12/2017**. Secondly, inter-country adoption or specifically, a non-citizen of Uganda is allowed to adopt a Ugandan child only in exceptional circumstances and even then, only if they fulfill the conditions under Section 46 that he or she:-

- (a) *Has a recommendation concerning his or her suitability to adopt a child from his or her*

country's probation and welfare officer of other competent authority; and

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

A new addition to the law appears in Section 46 (5) by which certain persons are now permitted to give information that would assist courts to determine that the best interests of the child are protected. These include advocates, probation and social welfare officers or a guardian *ad litem* for the children. I believe that list may not be exhaustive and the court may depending on the circumstances presented, invite information from other sources.

Further according to Section 46 (6) & (7) of the Act, adoption should be the last recourse for children and court is enjoined to consider a continuum of comprehensive child welfare services. These would include a broad range of services and community based family centered alternative care options which may either be family preservation, kinship, foster care or, institutionalization.

2. Are the Children suitable candidates for an adoption Order?

Applicants' counsel submitted that the children were themselves born to another child. That their conception was the result of a violation of their mother's vulnerability, an epileptic with mental challenges. That such ailments impair her ability to raise the

children, making this a case with exceptional circumstances, worth the consideration of the Court under Section 46 of the Act. Counsel further strongly submitted that save for a recommendation from their countries of origin, the applicants had fulfilled all the other requirements for an inter country adoption. That no other person is willing to take care of the children, thus making the petitioners, who already have their custody, the best candidates for an adoption order

The circumstances and history of the children were given in detail at the trial and by affidavit evidence. Both children are born to Namuli Nassolo stated to have mental and neurological challenges. The medical report from the Jinja Referral Hospital dated 1/6 2018 indicates that she is their patient at the mental health unit, on treatment of epilepsy and psychotic symptoms.

According to both the 1st petitioner and Ms. Matte, Nassolo and Bizigo was received at Ekisa on a reference from Spring Hope, a ministry operating in Kangulumira. Nassolo was by then pregnant with Grace who she delivered at Ekisa. She was sent because there were allegations that she was being used as a sex worker, a minor, epileptic and mentally ill. She had to be discharged from Ekisa after it was discovered that she was sexually abusing Grace and was handed over for care and protection to her grandmother in Kangulumira.

The first petitioner had her first encounter with the children and their mother at Ekisa where she was employed as the community

care outreach coordinator. She picked interest in caring for the children and around the same time, met and married the 2nd petitioner on 1/12/2014. The petitioners then jointly sought and were assessed as foster parents by Ekisa and a report to that effect is available. They followed that up with an assessment by the National Alternative Care Panel (hereinafter referred to as the Care Panel) in the Ministry of Gender, Labour and Social Development (MGLSD). Following their approval on 30/7/2015, both children were physically released into their care on 8/9/2015. They eventually applied for, and were given Care Orders with respect to both children by the Jinja-Kagoma Family and Children Court on 2/9/2016. The children are currently in the care of the petitioners who are fully charged with their education and general maintenance.

There is strong evidence to show that only one of the children's biological parent is available and her address is known. It is suspected that the children had different fathers but efforts to locate them, have been futile. Evidence of newspaper adverts and radio announcements made by Ekisa in September 2016 were attached to the application. It was confirmed by Ekisa Ltd that no male parent ever claimed either child in response to those announcements. The available parent is herself a minor and mentally ill and with no resources to support the children. Two in-depth children assessment reports issued by Ekisa showed that earlier plans of resettling the children with their mother and grandmother proved unsuitable because their mother continued

to suffer violent seizures and her mental illness required treatment. It would mean that the only available sanctuary would be institutional care, which is not considered the best alternative.

I conclude therefore that the children are in urgent need of care and protection. Since they are already being fostered, and the fostering period has run its course, they are indeed suitable candidates for adoption into a loving and supportive home.

3. Do the petitioners qualify to be adoptive parents under the Act?

I have enumerated the conditions for an adoption by non Ugandans which I deem the petitioners substantially fulfill.

They are 33 and 36 years old respectively which would make them approximately 26 years older than the children. Birth certificates for both the petitioners and records for the children's birth were availed to confirm that fact. It was explained and the Court appreciates the fact that, birth certificates of the children could not be obtained from National Identification and Registration Authority (NIRA) before an adoption order was made.

Further, in my interview with the applicants, they confirmed that they have lived in Uganda for approximately four and four and a half years respectively. The 2nd petitioner has not returned to the USA for the last four years, and both petitioners intend to remain here for an indefinite period. The 2nd petitioner is the Managing Director of Hope Smiles Ltd, a Company limited by guarantee, which offers dental services and builds dental and does outreach

clinics in areas lacking quality care. Although a volunteer, he is able through fundraising, to obtain an allowance of about USD 3,800 per month. Judging from the nature of the 2nd petitioner's work which demonstrates long term plans, I am inclined to believe that both petitioners will remain in Uganda for long. They live together with their biological son and the children at a confirmed address within Jinja which with the other factors, is a demonstration of their intentions of a long stay in Uganda.

Thirdly, the petitioners should have fostered the children for at least one year under the supervision of a probation and social welfare officer. Following a successful appraisal, both petitioners were on 22/5/15 issued with a fostering certificate by the Jinja District Probation and Social Welfare Officer. This was followed up with a Care order from the Jinja Kagoma Family and Children Court granted on 2/9/2016. The probation officer's report indicates that fostering has been under his keen supervision. Both petitioners have also attached certificates of good conduct issued by the National Central Bureau of International Police confirming that they have never been convicted of any criminal offence thus fulfilling the requirements of Section 46 (b) and (c) of the Act.

Recommendation and suitability to adopt from the petitioners' home countries:

It was a matter of concern to the Court that there was no recommendation by the petitioner's' home countries to confirm

their suitability to adopt the children. In his submissions, their counsel explained that one need not necessarily be obtained due to their extended stay in Uganda. He reasoned that since they are ordinarily resident here, the probation officer of Jinja would be best placed to assess their parental duties, and that the court thereby waives that requirement.

The Petitioners' counsel also mentioned a supplementary affidavit filed by the 2nd petitioner explaining his interaction with the American Embassy to with regard to the practice followed to obtain a recommendation from them for an American citizen seeking to adopt a foreign child. Counsel also attached to his submissions what appeared to be an email communication between the 2nd petitioner and the Embassy to that effect. However, the stated affidavit was missing from the record. Without it, the email communication cannot be considered. Strangely, that email communication was attached to the written submissions which leads me to believe that counsel omitted to file a supplementary affidavit for the 2nd petitioner as stated. This is a serious omission that could negatively affect the entire application altogether!

I have powers under Section 46(14) of the Act to waive any statutory requirements for an intercountry adoption. I would imagine it is a statutory discretion that must be exercised judiciously and with due regard to the welfare of the children concerned each case being taken on its facts.

The practice of our Courts has long been to accept assessments prepared by authorized bodies from the home countries of the applicants. Having been married in the USA, I would expect a home study prepared and issued by a federal state which the petitioners consider their home abroad in USA. The petitioners in this case definitely have no such report from either Canada or the USA.

Although I take judicial notice of the fact that the USA Government has previously allowed to accept adopted Ugandan children into their country, I would in this case, have virtually no relevant information concerning the petitioners from their respective mother countries, to confirm their suitability as parents.

The above notwithstanding, both petitioners have presented positively strong recommendations from the Government of Uganda and other civilian and neutral sources supporting their candidature, and which I find sufficiently sound to give a good picture of their suitability.

I hasten to add that I do not at any level denigrate the importance of an assessment carried out by the petitioners' home country. However in my view, under certain particular circumstances, the best assessment for a possible candidate for an intercounty adoption would be an institution that has visited, and with a professional eye, observed the capabilities of applicants and their bonding with the children they intend to adopt or foster.

Between them, the applicants have resided in Uganda for over three years. They have demonstrated an intention to stay for an indefinite period. The 2nd petitioner has not even returned to his home country for the last four years. Without making any evidential conclusions, I am persuaded that his home country would not be the best to give an evaluation of his suitability and if it did, that evaluation may be outdated and thus not suitable in the circumstances, which would defeat the core purpose of such recommendations. The same would apply to the 1st petitioner.

I have in my decision of in the matter of **Debra Grace Misc Cause No. 54/2016**, allowed a British citizen to adopt a female invalid child, even without an explicit recommendation from her home country. This was because I considered her long stay (of seven years) could best be substantiated by a probation officer in Jinja, rather than an authority in the UK where only her formal but not social antecedents would be on record.

The circumstances of the two cases are similar. Both petitioners have lived for a considerably long period in Uganda and have submitted themselves to supervision of the probation officer of Jinja District. They have in addition submitted themselves for evaluation by an independent Social Worker Commissioned by Ekisa, been vetted by Uganda police and the local authorities of their area of residence, as well as been cleared by the Care Panel which is a national body of repute.

I will accordingly grant counsel's prayer to waive the requirement for a recommendation from the Canadian and or USA Governments in favour of recommendations done here in Uganda and attached to this petition.

It is also a requirement of our law that the consent of the biological parents is necessary where they are known, but in the same vein can be dispensed with if the parents are incapable of giving it. The strong evidence presented is that the children's biological father or fathers are unknown. No response was made to media reports of the children's existence in that regard. It was Ms. Matte's view, which is not unfounded that, the children's conception having been nonconsensual, there is a strong possibility that the fathers will not care to be known. On the other hand, the children's biological mother is available and well known to both the petitioners and the previous careers. Proof was provided that she has a mental ailment and is currently a patient at the mental health unit at the Jinja Regional Referral Hospital. She would in law, be incapable of giving her consent to the adoption.

I would accordingly also waive the requirement for such consent.

In conclusion, I do agree with counsel's submission that the petitioners qualify to be appointed as adoptive parents of both children

4. Is the application in the best interests of the children?

I have previously in my ruling, emphasized the significance of the welfare principle in matters concerning the adoption of children. According to Section 3 (3), of the Act, it would entail giving regard to;

- (a) The ascertainable wishes and feelings of the child concerned considered in the light of his or her age or understanding.*
- (b) The child's physical, emotional and education needs;*
- (c) The child's age, sex, background and any other circumstances relevant in the matter.*
- (d) Any harm that the child has suffered or is at risk of suffering*
- (e) Where relevant the capacity of the child's parents, guardians or others involved in the care of the child in meeting his or her needs.*

The facts of this case are that the two children were the result of an unfortunate conception, with their mother also a minor, probably forced into sexual intercourse. Worse still, she at the time suffered and still suffers from a mental illness rendering her incapable of caring for the children. Indeed, she is in need of care herself. She was in the earlier years put under the care of Ekisa

who took care of her and the two children. She had to be released when it was discovered that she was sexually molesting Grace, probably due to her mental inabilities, and the fact that she was also exposed to early sexual violence. The 1st petitioner who was at the time employed by Ekisa, became attached to both children and showed interest to foster them. Following her marriage to the 2nd petitioner, they showed a joint interest to foster and then adopt the children. Much of the initial steps in our law have been fulfilled and the petitioners have obtained and presented detailed assessments from both the Ekisa Ministries and Probation and Social Welfare officer of Jinja, strongly supporting their capabilities.

Since the children and their mother were first cared for by the Ekisa Ministries International, and it was the first point of interaction with the 1st petitioner, their recommendation would be very pertinent to this application. The report which included home visits indicated that both applicants were very well known to Ekisa and had as a couple made the joint decision first to foster, then adopt the children. To show her full commitment as a parent, the 1st petitioner stepped down from her assignment as a care outreach coordinator with Ekisa, and became a full time mother. The 2nd petitioner continues with his charity work as a dentist, but is fully aware of his responsibilities as a father and he too makes time for the children. Both petitioners are college graduates and with strong Christian backgrounds. They do share decision making and felt that placement of the boys in their home would

have a beneficial impact in their relations and inculcate the desire to selflessly give as parents. They have over the years built a strong bond with the children and have made arrangements to entrust parental responsibilities to their two friends in the event of their passing.

In addition, the probation officer, Jinja gave a very positive reference for the petitioners. He visited with the petitioners during the fostering period, and observed how the children have adjusted from their four year long stay in a children's home into a traditional home setting. He observed that the petitioners are God fearing and take their parental duties very seriously. They are very attached to both children and have made it their priority to lead, guide and shape the children and they are always generous and very affectionate towards them. Likewise, the children have grown to love and trust the petitioners and this reflects in their positive physical, social and psychological development.

The report in addition shows that the family resides in a spacious two bedroomed apartment with all amenities and enough garden space for the children to play and express themselves. They are well acquainted with the neighbors who sometimes assist with babysitting duties. The children own toys and are allowed to share in the home chores. Both children have had all their immunizations and are in schools near home. They have no major health issues and both petitioners being organized, healthy, clean and active, have passed on those positive traits to the children. He opined that the petitioners have provided a home and

environment that will make well adjusted and healthy young men out of these children. His gave a strong recommendation in support of the adoption.

In addition, the petitioners made two appearances before the Care Panel who found them to be fit foster parents in Uganda on a long term. The Care Panel then found them a suitable family for children in need of care with effect from 30/7/2015.

In further addition to those strong recommendations were other references provided by the petitioner's friends, neighbours, church friends, a social worker and workmates who have closely interacted with them and the children. Those references were unanimous that the petitioners who are dedicated to charity work, are hardworking, intelligent, kind, mature, patient, calm, honest and reliable and most important, are committed to the well being of the children. The 1st petitioner was in particular singled out as very experienced with caring for children with special needs, and the 2nd petitioner as a dedicated dentist committed to his charity.

I was impressed that as directed by the Care Panel, the petitioners have interested themselves in keeping in close touch with the children's mother. They have visited her in Kangulumira village three times. They and Ekisa reported to the Court that she is receiving psychiatric care at the Jinja Main Psychiatric ward with Ekisa meeting the costs. It is important that the children grow in full knowledge of their biological mother and her status. Since the applicants intend to remain in Uganda for a long time, that

relationship should be encouraged to ensure that the children do not lose touch with her and her wider family in general. This will ensure that they are well grounded and able to adopt to their new life, but with a strong bonding with their biological, ethnic and cultural background.

Both children have been reported to be active and healthy. They have received their full immunization and the 2nd petitioner's medical background and practice should ensure their continued optimum health. Both petitioners are reported to be healthy and active, with the 1st petitioner having a strong sports background. They have tried to inculcate similar behavior into the children, which explains their good health. The children's social and spiritual wellbeing is also well catered for as the petitioners have professed to be God fearing and attend the Acacia Community Church as well as Bible study and other Christian activities. Although the 1st petitioner is unemployed and the 2nd petitioner majorly a volunteer dentist, his modest income should be adequate to meet the needs of this growing of family.

In conclusion, I am persuaded that the facts of this case present exceptional circumstances to permit non-citizen petitioners to adopt the two children concerned. By their own proven competencies, capabilities and reliable and positive references, the petitioners qualify to be appointed the adoptive parents of the children Ekisa Grace and Bizigo Jamil. I therefore allow the application and order as follows: -

1. The petitioners Alicia Anna Christine Van Huizen Shinska and Ryan Christopher Shinska are granted an order of adoption in respect of the children **Ekisa Grace** and **Bizigo Jamil**.
2. I direct that the petitioners be issued with official birth certificates for both children by the National Identification and Registration Authority (NIRA).
3. I direct that the petitioners may travel with the children either to Canada, or the United States of America or any other country of their choice, in the event they have to return in order there to fulfill their obligations as adoptive parents.
4. I direct that the Registrar of Births and Deaths makes an entry recording this adoption in the Adopted Children Register.
5. It is further directed that this adoption be furnished to the consular department in the Ministry of Foreign Affairs at Kampala and at the Ministry of Gender, Labour and Social Development in Kampala.
6. The petitioners shall meet the costs of this application.

I so order.

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EVA K. LUSWATA

JUDGE

24/08/2018