

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**FAMILY CAUSE No. 52 OF 2018**

**IN THE MATTER FOR THE ADOPTION OF RYAN KENNETH SSENTONGO  
5 MUSASIZI BY ELSAYED RAYMOND FREDRICK AND ELSAYED LESLIE  
LEMOINE**

**Before: Hon. Lady Justice Olive Kazaarwe Mukwaya**

**RULING**

**The Petitioners**

10 This is a petition brought by Elsayed Raymond Fredrick, 39 years old and Elsayed Leslie  
Lemoine 38 years old; a married couple seeking to adopt a minor, one Ryan Kenneth Musasizi a  
Ugandan child. According to affidavits sworn by the petitioners and supporting documentation,  
they are citizens of the United States of America and holders of passports No. 466150689 and  
No. 489655544 marked 'A' and 'U' respectively. They were married in the State of Louisiana on  
15 the 15<sup>th</sup> June 2002 at the Bayou des Glacises Church, marriage certificate was attached and  
marked 'B'. They have residences both in the United States of America; at Big Bend Louisiana  
and in Uganda at Block 246 Plot 1143 the tenancy agreement to this property was attached and  
marked 'G'. Raymond and Leslie are parents to five biological children; Juliette Joy,15, Gideon  
Samuel,13,Samuel Jacob,8, Jacob Levin, 6, Levin Frederick, 4 and one adopted child, Gift aged  
20 6 years old (birth certificates attached and marked C1, C2, C3, C4, C5 and C6). The 1<sup>st</sup> petitioner  
is a medical doctor by profession and is employed by the Children Justice Initiative, an NGO that  
provides care and services to imprisoned children in Uganda. The 2<sup>nd</sup> petitioner is a registered  
nurse however she is currently a stay at home mother.

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**The Child's Parents**

Ryan Kenneth Sentongo Musasizi was born on the 20<sup>th</sup> June 2012 to Robert Sentongo Wajja and Esseza Namuyaba Nabowa at Bombo Health Centre, Luwero District in Uganda, birth certificate issued by Luwero Town Council was attached to the affidavit of his biological father, Robert, and marked 'B'. In his affidavit, which contents he reiterated before this court, Robert stated that

5 he was the biological father of the child Ryan. He had one sexual encounter with Ryan's mother which resulted in the pregnancy. When Esseza was three months along she informed him about the pregnancy and he asked her to come to his home, since his wife at the time, Namugerwa Rose was not home. After two days Esseza left and Robert only saw her again when his consent was being sought for this adoption. Robert had no objection to the petition for adoption. He had

10 six other children besides Ryan, from three women. Out of the six, only 3 were living with him and even then he was struggling.

Esseza in her affidavit attached to the petition and in her testimony before this court stated that she is the mother of 11 children in total. Ryan is one of her youngest children. Eight of her children were raised by their fathers' relatives. It is her three youngest children that she has

15 attempted to care for. Esseza told this Court that with no assistance from his father Robert, during the pregnancy and after Ryan was born she was constrained with meeting his needs. She noticed, 3 days after he was born that he had seizures and when he was about a week old, she took him to St. Luke's Namaliga hospital in Bombo and abandoned him there on the 29<sup>th</sup> July 2012 because she was unable to cope. When she went back home, her mother asked her where

20 her baby was but she did not answer. Esseza heard announcements on the radio about an abandoned baby, she went to the hospital but did not find the baby where she had left him and decided to leave without making any inquiries. The Local Council chairman who had been alerted by neighbours who were concerned because they could not see Esseza with the baby asked her where the baby was. Esseza confessed what she had done and the Chairman advised

25 her to report the matter to the police which she did. The matter was reported at Bombo Police Station vide Ref BOSD/35/29/7/12 and Esseza was arrested and detained on charges of abandoning her child. After almost two weeks in custody, Esseza was released and she learnt that Ryan had been 'taken by whites'.

Meanwhile, upon the recommendation of Ms. Namigadde Joyce the Senior Probation and Social

30 Welfare Officer of Luwero, a care order was made by the Family and Children Court of Luwero

on the 6<sup>th</sup> of May 2016, appointing the petitioners as foster parents to Ryan, the application, 046/2016 and the subsequent care order are attached and marked, 'L' and 'M'. Esseza followed up with the police to find out where her child was, several people visited her home to determine if she was able to look after Ryan and eventually she met Jill Wiebe, who had been fostering the  
5 child on behalf of the petitioners, who advised her to go and pick up Ryan, who by that time was one year and a half years old.

Jill Alisa Kastiro (previously Wiebe) swore an affidavit in her capacity as the person into whose care Ryan was committed immediately after his mother abandoned him in hospital. She is a Canadian citizen and in 2012 she was working with Watoto Ministries in Uganda as a Quality  
10 Control Coordinator. After efforts to locate Ryan's mother, Esseza were unsuccessful, Jill was granted a temporary care order to foster Ryan in August 2012 which lasted until 6<sup>th</sup> March 2014. During this period the Probation and Social Welfare officer of Luwero asked Jill to continue looking after the child as she determined whether his biological mother would be a suitable mother for the child, given the history of abandonment. After those investigations were  
15 concluded, Esseza participated in a resettlement process that included counselling, support in planning how to provide food for the child and multiple visits to Kampala and the home of Esseza. Ryan was resettled with his mother on the 6<sup>th</sup> of March 2014. The Probation and Social Welfare Officer Luwero acknowledged the resettlement by a letter marked 'F'. Esseza was at the time, welcoming, loving and remorseful for having abandoned Ryan in the first place. Ryan's  
20 biological father did not participate in the process despite several requests for him to do so. Jill continued visited the child on the 21<sup>st</sup> June 2014 and on the 17<sup>th</sup> November 2014 to see how he was adjusting and he appeared to be settling well. At the beginning of 2015, Esseza called stating that the child had stopped talking but was otherwise well, Jill was out of the country by this time.

On the 23<sup>rd</sup> June 2015, Jill recommended that the child be taken for treatment, and the mother  
25 stated that she was very busy and they could take him to hospital if they wanted. The Probation and Social Welfare officer of Luwero allowed Jill to take the child to Kampala for two days for medical treatment and medical tests revealed that the child was malnourished but nothing indicated why the child had regressed so badly. Ryan was returned to his mother after 2 days with supplements. In February 2016 after receiving news that Ryan's situation had deteriorated,  
30 Jill requested the petitioners to visit him as she was no longer living in Uganda. She asked the

petitioners specifically because Raymond Elsayed was a medical doctor and Jill was concerned about the child's health. The Probation and Social Welfare officer, Luwero, gave the petitioners a temporary care order for the child to take him for medical treatment in Kampala. Medical tests on the child revealed maltreatment and physical abuse. The Probation and Social Welfare officer,  
5 Luwero deemed it unsafe for the child to be returned to the home of Esseza. Jill concluded that efforts to resettle the child with his mother failed. She was aware of the petitioner's application for adoption and she believed that it was in Ryan's best interests that it be allowed.

Esseza told this court that she tried to provide for her child Ryan, but her earnings were too meagre to sustain her and her children including a new born, Ryan's father continued to be  
10 uncooperative. Ryan deteriorated and the progress he had made in the care of the petitioners was lost. The petitioners visited the child to check on his health but it was not good and they took him for treatment on two separate occasions. When he was 4 years old, they took him for an extended length of time for medical treatment. The petitioners then requested Esseza to consent to the adoption of her child, which she gave because she was unable to meet his needs. She reiterated in  
15 court that the petitioners have been with the child for over three years and while she cared for him, she had agreed to his adoption since it was for his good, her written consent was attached to her affidavit and marked 'C'.

It was the duty of this Court under S.48 of the Children Act as amended to determine whether the petitioners were entitled to an order of adoption over baby Ryan Kenneth Ssentongo  
20 Musasizi as prayed in their petition. This court in so doing had to answer two questions:

- a. Whether the petitioners qualified to be appointed the adoptive parents of Ryan Kenneth Ssentongo Musasizi?**
- b. Whether the application was in the best interest of Ryan Kenneth Ssentongo Musasizi?**

25 As to the first question, S. 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 25 years of age and is at least 21 years older than the child. S.46 of the Children Act as amended, 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 one

year and has fostered the child for at least one year under the supervision of a probation and social welfare officer; does not have a criminal record; has a recommendation regarding his or her suitability to adopt a child from his or her country's probation and welfare office or other competent authority and has satisfied the court that his/ her country of origin will respect and  
5 recognise the adoption order.

Raymond and Leslie Elsayed are American citizens, aged 39 and 38 years old making them 31 and 29 years older than Ryan Kenneth Ssentongo Musasizi respectively. The child has been in their care by a foster care placement undertaking dated 6<sup>th</sup> May 2016. This placement was under the supervision of the Probation and Social Welfare Officer, Luwero, Ms. Namigadde Joyce.  
10 This Care Order was issued by the Family and Children court of Luwero following an application by the petitioners, vide 46/2016. The child Ryan has been in the custody of the applicants since that date. On the 12<sup>th</sup> of September 2018, Ms. Namigadde made a report recommending that the petitioners adopt the child. The report was received by this court on the 17<sup>th</sup> September 2018. In brief, the report highlights the background of the child, the  
15 circumstances surrounding his birth, his abandonment by his mother, the temporary foster care placement with Jill, the failed attempt to resettle him with his mother and the eventual care order issued to the petitioners on the 6<sup>th</sup> May 2016. Ms. Namigadde stated in her report that she has been supervising the petitioners and has found that there is remarkable improvement in the child's welfare. She added that the petitioners have duly completed all the conditions required  
20 under the Children Act as stated in S.46 of the Act as amended, the consent of Ryan's parents had been received and she therefore believed that adoption was in the best interest of the child.

On the 21<sup>st</sup> of November 2017, a Home Study Report, marked 'N', was completed by Ms. Susan Weenink the Director of Social Work Services with the assistance of Ms. Angela Goering a Social Worker under the auspices of the Adopt Abroad Incorporated Adoption Agency situated  
25 in Pennsylvania. The report detailed an investigation into the background of both petitioners; including their family, education, work, finances, medical history and preparation for adoption. At the time this report was prepared, the child Ryan was a foster child of the petitioners and these social workers were able to observe his interaction with the petitioners' family, which they found favourable. Ryan was found to have mild to moderate special needs of which the  
30 petitioners were aware and were willing to manage since they both had a medical background.

The petitioners had also completed the requisite 10 hour adoption preparation training. After a thorough study of the petitioners, a recommendation was made for the petitioners to adopt a male child aged between 0-8years old since they were found to be fit and proper persons suitable to be adoptive parents.

- 5 The petitioners attached certificates of good conduct from the Uganda Police Force dated 17<sup>th</sup> July 2017, indicating that they both had no criminal record in Uganda. These two certificates were marked 'Q' and 'X'. They also attached general physical exam reports, for prospective adoptive parents which showed that both were in good health. The reports were marked 'R' and 'Y'.
- 10 This is the second adoption for the petitioners. The first was with Gift Kisaakye Elsayed, a Ugandan child whom the petitioners adopted on the 20<sup>th</sup> May 2015. When this court observed their family at the hearing of the petition, the bond between the biological children and the adopted child Gift was clear. A bond had also formed between the child Ryan and the Elsayed family. The biological mother of Ryan, Esseza was in court and so was his biological father but
- 15 there was no connection there. The petitioners have proved that they can be trusted to be good adoptive parents long after the order has been issued as is evident with their daughter Gift who appeared happy and well adjusted. They have 5 biological children and the addition of Ryan will bring the number to seven. The fact that the 2<sup>nd</sup> petitioner is a stay at home mother by choice enables her to give her full attention to the children with the assistance of their live-in nanny,
- 20 Isabel Lukins, who also assists with the home schooling. From this court's observation, Ryan has thrived during his 2 years in the petitioners' care, in stark contrast to the ailing boy in the photographs tendered when he was in the care of his biological mother.

It is this Court's finding that the petitioners have provided sufficient evidence of their suitability as adoptive parents.

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**b. Whether the application was in the best interest of Ryan Kenneth Ssentongo Musasizi?**

The Children Act provides for the welfare principle guidelines which courts are enjoined to consider in making answering this question.

S.3(1) provides that *'the welfare of the child shall be of paramount consideration whenever the states, 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.'*

S.3(3) provides that *in determining any question under subsection (1), court or any other person shall have regard to:*

- a. *the ascertainable wishes and feelings of the child concerned with due regard to his or her age and understanding*
- b. *the child's physical, emotional and educational needs;*
- c. *the likely effects of any change in the child's circumstances;*
- d. *the child's sex, age, background and any other circumstances relevant in the matter;*
- e. *any harm that the child has suffered or is at risk of suffering; and*
- f. *where relevant, the capacity of the child's parents, guardian or any other person involved in the care of the child, and in meeting the needs of the child'*

Ryan Kenneth Ssentongo Musasizi's mother Esseza Namuyaba Nabbowa and his biological father, Wajja Robert Ssentongo unequivocally relinquished parental responsibility to the petitioners. Esseza tried but simply failed to meet Ryan's basic needs. Robert did not try at all citing inability to provide for Ryan.

The petitioners opened their home to Ryan and have cared for him for the last two years. Ryan presently has some medical challenges but this has not compromised the petitioners' commitment to have him as their son. This court has no doubt that the granting of this application will be in the best interests of Ryan Kenneth Ssentongo Musasizi.

I hereby make the following orders:

1. An order of Adoption of the Child Ryan Kenneth Ssentongo Musasizi by the petitioners, Elsayed Raymond Fredrick and Elsayed Leslie Lemoine is allowed.

2. Petitioners are allowed to change the child's name from Ryan Kenneth Ssentongo Musasizi as they deem suitable.
3. The Registrar General of births and deaths shall make an entry recording this adoption in the Adopted Children Register.
- 5 4. The Adoption Order shall be furnished to the Consular Department in the Ministry of Foreign Affairs.
5. Costs of the Petition to be provided for by the petitioners.

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10 **Olive Kazaarwe Mukwaya**

**JUDGE**

Dated at Kampala this 27<sup>th</sup> day of September 2018

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