

1 **THE REPUBLIC OF UGANDA**

2 **IN THE HIGH COURT OF UGANDA HOLDEN AT MUKONO**

3 **HCT-14-FD-AD-0015-2019**

4 **IN THE MATTER OF THE CHILDRENS ACT CAP 59 AS AMMENDED BY THE ACT**
5 **OF 2016 AND**

6 **IN THE MATTER OF A PETITION FOR THE ADOPTION OF EDSON MUGAGA**

7 **(A CHILD) BY ANASTASIOS MOUTAFIS AND GEORGIA NELLI GIANNIOTI**

8 **BEFORE HON. LADY JUSTICE MARGARET MUTONYI, JUDGE HIGH**
9 **COURT**

10 **RULING**

11 1. This Ruling is in respect of a Petition for an adoption in respect of the child **EDSON**
12 **MUGAGA** by **ANASTASIOS MOUTAFIS** and co- petitioner **GEORGIA NELLI**
13 **GIANNIOTI** seeking for orders that;

14 a) An order for the adoption of the child **EDSON MUGAGA** by the petitioners
15 **ANASTASIOS MOUTAFIS** and co- petitioner **GEORGIA NELLI GIANNIOTI** be
16 granted.

17 b) The Registrar General of births and Deaths make an entry recording the adoption in the
18 Adopted Children Register.

19 c) The Adoption order be furnished to the consular department in the Ministry of Foreign
20 Affairs Kampala.

21 d) Costs of the petition shall be provided for by the petitioners.

22 Counsel Haila Ndawula represented the Petitioners and addressed court both orally and by
23 written submissions which are on record.

24 The petition was brought under *sections 2, 44 (1) (b), 45 and 46 of the Children Act CAP 59,*
25 *sections 3, 4, 13 and 14 of the Amendment of 2016, Rules 3 (2) and 7 of The Children*
26 *(Adoption of Children) Rules SI 59-1.*

27 The petition is supported by the affidavits of the Petitioners **ANASTASIOS MOUTAFIS** and
28 **GEORGIA NELLI GIANNIOTI, Mugabi Shem Henry**, the social worker at Sangaalo Babies
29 home together with his report dated 23rd March 2019, Oketch Peter the child's maternal
30 grandfather, Namunana Jane the child's maternal grandmother, Musisi Ronald the maternal
31 uncle of the child, Namuhenge Betty maternal aunt to the child and a report from the Probation
32 and Social Welfare Officer Buikwe District Naigaga Lydia who assessed and evaluated the
33 Petitioners' suitability to adopt the child.

34 In addition to their affidavits and consents to the adoption which were already filed on court
35 record all witnesses attended court which gave court an opportunity to evaluate their conduct and
36 demeanor.

37 **2. Brief background of the child**

38 1. The child Edson Mugaga was born on 28th October 2018 to Nairuba Sarah who passed
39 away on 5th November 2018 .The father of the child was not known by the maternal
40 family that found it hard to care and provide for him, and as a result they reached out to a
41 Community Based Organization known as SHARED home for assistance. Unfortunately
42 SHARED did not have the capacity to take care of the child. He was eventually taken on
43 by Sangaalo Babies Home from where the petitioners got to know about him and
44 immediately picked interest in adopting him as their own.

45
46 The Petitioners have been supporting Mugaga with all the necessities of life since 12th
47 April 2019 when they got to know about his plight and they are ready and willing to meet
48 the child's emotional, spiritual, medical and educational needs as their own child.

49 All efforts to trace the child's father have proved futile and none of his maternal relatives are
50 able or willing to take care of him as they had already given him away to a children home yet he
51 is in need of love, care and urgent medical attention.

52 **3. Brief background of the petitioners.**

53 The Petitioners **Anastasios Moutafis** and **Georgia Nelli Giannioti** are a married couple that got
54 married on 12th October 2018 as evidenced by their marriage certificate on record (annexture C
55 to the petition) ,although they had lived together for 8 years before formalizing this union. They

56 are Citizens of Greece as evidenced by their passports to wit Passport No. AP2396544 for
57 Anastasios Moustafis and passport No. AP2373108 for Georgia Nelli Giannioti. While in
58 Greece, the couple has their residence at Hellenikon 37 Amazon Street Greece but are currently
59 residents of Njeru South Ward, Nsenge Buikwe District as per their introduction letter on file
60 endorsed by Nsenge LC1 chairperson dated 12, April 2019.

61 Both Petitioners are gainfully employed. The 1st petitioner is employed with Kostopoulous Sot.
62 & Bros General Partnership as a technician of church supplies.

63 He also teaches does part time teaching of climbing at different schools.

64 The 2nd Petitioner is a Pilates Instructor at SWAHA Yoga and Pilates Center and also a partner in
65 Christos Ath. Gianniotos & Co. GP with 45% shares in the family business partnership. Both
66 their employment documents are attached to their affidavits and marked as PE6 and PE7.

67 The Petitioners do not have any children of their own and as noted by the 2nd Petitioner in her
68 testimony in court, the couple tried several scientific remedies including IVF but they still could
69 not conceive. It was upon this background that they resolved to adopt a child as a way to grow
70 their family and also to be able to bless a child's life.

71 They got to know about Edson Mugaga from Shem Mugabi a Social Worker at Sangaalo Babies'
72 home sometime in April this year and having learnt about his plight, they started sponsoring his
73 welfare immediately until 12th, April 2019 when they formerly started fostering the child under
74 the supervision of the Probation and social welfare office, Buikwe.

75 **4. WRITTEN SUBMISSIONS**

76 Counsel for the Petitioners made both oral and written submissions that are on record and will
77 refer to them as and when necessary.

78 In her written submissions, counsel raised three issues for resolution to wit;

79 ***a) Whether this court is seized with the jurisdiction to entertain the matter.***

80 ***b) Whether the petitioners qualify to be appointed as adoptive parents of the child.***

81 ***c) Whether the application is in the best interest of the child.***

82

83 **5. RESOLUTION OF ISSUES**

84 I will resolve issues using their chronological order;

85 **a) Whether this court is seized with the jurisdiction to entertain the matter**

86 *Adoption is the creation of a parent – child relationship by Judicial Order between two*
87 *parties who are unrelated creating a lifelong relationship of parenthood between the child*
88 *and adoptive parent. Before the order is made, court must be satisfied that the adoptive*
89 *parent is suitable and committed to being a parent of the child and that the child is*
90 *available for adoption. Since the adoption order creates lifelong relationship, the best*
91 *interest of the child is of paramountcy.*

92 **Section 44 (1) (b)** of the Children Act as Amended provides that an application for an adoption
93 order may be made to the High Court where the child or the applicant is not a citizen of Uganda
94 and the court may subject to the Act grant the Applicant.

95 In the instant case, the child is a Ugandan citizen while the petitioners are Greek Citizens. This
96 court is therefore vested with the jurisdiction to entertain this petition being an inter country
97 adoption.

98 This issue is therefore resolved in the affirmative.

99 **b) Whether the petitioners are suitable to be appointed the adoptive parents of the**
100 **child.**

101 The Children Act Cap 59 provides for conditions that the adoptive parent must fulfill before
102 he/she can qualify to adopt a Ugandan child.

103 **Section 45 (1) of the Children Act** as amended provides that an adoption order can be granted to
104 a sole applicant or jointly where the applicant or at least one of them has attained 25 years and is
105 at least 21 years older than the child.

106 The Petitioners herein are a married couple as evidenced by their marriage certificate. Anastasios
107 Moutafis is applying jointly with his wife Georgia Nelli Gianniotis. The 1st petitioner is 44 years
108 of age having been born on 12th June 1975 at Attica, Athens in the Hellenic Republic. The co-
109 petitioner is 45 years old having been born on 7th April 1974 to Violeta Dimitriadou and Christos
110 Gianniotis in the Athens county of Attica (annexture B to her affidavit in support). The child
111 Edson Mugaga is almost 11 months old having been born on 28th October 2018 to Nairuba Sarah

112 and an unknown father in Budondo hospital, Kagoma County in Jinja district as per his birth
113 certificate attached to Shem Mugabe's affidavit as annexure "D". It is apparent that both
114 petitioners are over 25 years old and way above the statutory requirement of being 21 years older
115 than the child which fulfills the age requirement.

116 **Section 45(4)** of the Act as Amended by *sec 13 of the 2016 Amendment*, provides that the
117 application shall not be considered unless the petitioner has fostered the child for a period not
118 less than 12 months under the supervision of a Probation and Social welfare officer.

119 In the instant case the Petitioners have fostered the child from the 12th of April 2019 as shown in
120 Annexure D of the affidavit of Georgia Nelli Gianniotiis which is less than the statutory period
121 of 12 months.

122 However, *section 14* of the Children (Amendment) Act 9 2016 amended section 45(4) by
123 permitting Court in exceptional circumstances to waive any of the specified requirements.

124 The Petitioners have only fostered the child for 6 months. Counsel for the Petitioner submitted
125 that this case provides exceptional circumstances that should permit this Court to waive the
126 remaining 6 months. She submitted that the couple arrived in Uganda on 11th April 2019 and
127 started living at Nsenge, Njeru South Buikwe District as evidenced by the introduction letter on
128 file dated 12th, April 2019 signed by the LC1 of the area. Immediately they arrived, the child was
129 placed under their foster care.

130 Court observed that the infant's maternal parents do not have the capacity to provide for this
131 child's welfare and gave him out to the children's home shortly after his mother's death as
132 evidenced by her death certificate on file (attached to Mugabi Shem's affidavit and marked "E")
133 and all efforts to trace his father have proved futile.

134 This child is in need of urgent surgical intervention as stated in the medical report dated 5th July
135 2019 by the General Doctor Kiwanuka Alexander Graham of the Uganda Orthodox Church Holy
136 Cross Orthodox Hospital. (A copy of the report is attached to co petitioner's affidavit as
137 annexure "F").The Petitioners have exhibited great concern about the welfare of this child in
138 that they have already contacted one of the most experienced pediatric surgeons in Greece, Dr.
139 George Pergamalis of IASO children's hospital who has confirmed that the hospital is able to

140 treat the child’s medical condition (the confirmation letter is attached to the co-petitioner’s
141 affidavit as annexure “I”).

142 This child who is only 10 months old has never enjoyed parental love and care after his mother’s
143 death barely 2 weeks after he was born. The petitioners have demonstrated themselves to be
144 loving, caring and providing for him all the necessities of life for the time they’ve spent with
145 him.

146 In spite of their busy schedule, they have sacrificed to come and stay in Uganda to bond with the
147 baby. Court observed that the Adoptive parents have already bonded with this child who has no
148 loving family in Uganda because they could not keep him in their homes after the mother’s
149 death. They abandoned him at the time when he was so delicate which this Court has construed
150 as a sign of lack of passion for the child. It is ideal for every vulnerable child like the infant in
151 issue to be loved, raised in a home environment with loving parents as a children’s home cannot
152 be a perfect substitute for a mother or father. In the result given the peculiar circumstances of the
153 infant, it is the opinion of Court that this is a proper and fit case to exercise its discretion of
154 waiving the statutory period of 12 months for fostering of the child.

155 This Court reiterates its holding in the case of **Re Victoria Babirye Namutosi, (Adoption**
156 **Cause No. 9 of 2017)**; Wherein, the petitioner had not fostered the child for the required 12
157 months yet the child needed urgent medical attention and this court held that; ***“Fostering the***
158 ***child for one year is a temporary condition that cannot be used to frustrate the process that***
159 ***leads to permanence in a child’s life.”***

160 **Section 46 (c) (d) and (e)** set down more conditions that should be fulfilled by the petitioners as
161 follows;

162 ***c.) doesn’t have a criminal record***

163 ***d.) has a recommendation concerning his or her suitability to adopt a child from his or her***
164 ***country’s probation and welfare officer or other competent authority***

165 ***e.) And should have satisfied the court that his or her country of origin will respect and***
166 ***recognize the adoption order.***

167 In fulfillment of the above, the Petitioners adduced evidence to show that they were cleared of
168 any criminal record by the Ministry of Justice, Transparency and Human Rights by the

169 Department of Criminal Records in Greece which issued the petitioners with criminal record
170 transcripts marked “PE9” and “PE8” for the 1st and 2nd petitioners respectively, both dated 1st
171 February 2019 and signed by Eleni Savva the Manager of the Department of Criminal Records
172 of the Public Prosecutor’s office of the court of first instance of Athens.

173 The Petitioners have also presented to Court an Evaluation Report by a competent authority to
174 wit; General Directorate of Public Health and Social Welfare, Department of Social Services and
175 Social Work Region of Ionian Islands, Hellenic Republic prepared by Kalliopi Giannaki, a
176 Social Worker dated 3rd December 2018 wherein the Petitioners have been highly recommended
177 as suitable parents for adoption. They also presented to Court an Eligibility Certificate endorsed
178 by the head of the Directorate Nikolaos Sofos for the Ministry of Foreign Affairs, dated 6th
179 February 2019 which deemed the expectant foster parents as eligible to adopt a child from the
180 infant age and in accordance with the provisions of Greek legislation. They further bound
181 themselves to monitor the adjustment of the child in the new environment and to provide
182 relevant advices after the realization of the adoption for three years by visits at least once a year.
183 This shows that their country of origin (Greece) will recognize and respect the adoption order if
184 granted.

185 Under **Section 46 (2)** the Probation and Social Welfare Officer is required to submit a report to
186 assist the court in considering the Application and that in addition, the court may require some
187 other person or authority to make a report in respect of the Application.

188 In the instant case, Lydia Naigaga the Probation and Social Welfare Officer for Buikwe District
189 prepared a report which is on court record dated 18th August 2019 in which she states that the
190 child Edson Mugaga has bonded very well with the petitioners and he is thriving under the
191 petitioners’ care. She recommended them as suitable parents for this adoption.

192 There is also an affidavit on file by Shem Mugabi the social worker from Sangaalo Babies Home
193 dated 16th August 2019 where he stated that he had an opportunity of witnessing the petitioners
194 bond with the child and they are very eager to have him as part of their family and he has no
195 doubt that they will make very good parents for Edson.

196 The Petitioners were evaluated by their physician on 23rd July 2018 Psychiatric and General
197 Hospital, Attica and they were found to be in excellent health, free of any infectious diseases and

198 in excellent mental health and therefore found to be very capable of parenting an adopted child.
199 Their medical reports are on record and marked PE11.

200 The infant was abandoned by his family because they could not take care of him. The petitioners
201 however are gainfully employed as already detailed earlier as per PE6 and PE7 and they can
202 support and raise the child in a good and recommended family environment.

203 Under **Section 47 of the Children Act**, the consent of the child's parent is necessary for the
204 adoption order to be made if the parents are known, but this requirement may be dispensed with
205 if the parents are incapable of giving it.

206 In the instant case, the child's father is unknown, his mother Nairuba Sarah passed away shortly
207 after he was born leaving him in the hands of his maternal relatives who also handed him over to
208 the Home. Be that as it may, the Petitioners with the help of Shem Mugabi the social worker at
209 Sangaalo Babies Home and the Probation Officer managed to trace the child's maternal relatives
210 who had an opportunity to interact with the petitioners and found them to be a blessing to their
211 child as they are his only hope of being raised in a family something they were un able to give
212 him. Oketch Peter the child's maternal grandfather, Namunana Jane the child's maternal
213 grandmother, Musisi Ronald the maternal uncle of the child and Namuhenge Betty maternal aunt
214 to the child, all filed affidavits in support of the petition and also gave their irrevocable consent
215 for this adoption.

216 In view of the above, this Court finds that the Petitioners have fulfilled all the legal requirements
217 under the Act and thus qualify to be appointed adoptive parents to the child.

218 c) **Whether the application is in the best interest of the child.**

219 It is trite law that when making decisions concerning children, the welfare principal is
220 paramount.

221 **Section 48 of the Children Act as Amended** is to the effect that the Court shall, before making
222 an adoption order be satisfied that it is in the interest of the welfare of the child, due
223 consideration being given to his or her age of understanding.

224 **Section 3 of the Children Act** as amended further provides that; *the welfare of the child shall*
225 *be of paramount consideration whenever the state, a court, a tribunal, a local authority or any*

226 *person determines the question in respect to the upbringing of the child, the administration of*
227 *a child's property, or the application of any income arising from that administration.*

228 The Court shall in particular have regard to the ascertainable wishes and feelings of the child
229 concerned considered in light of his or her age and understanding, the child's physical, emotional
230 and educational needs, the likely effects of any changes in the child's circumstances, the child's
231 age, sex, background and any other circumstances relevant in the matter. Any harm that the child
232 has suffered or is likely to suffer and where relevant, the child's parents, guardians or others
233 involved in the care of the child.

234 This court in the case of *Re. Victoria Babirye Namutosi* ibid, noted that,

235 *“As a general rule, the social worker is required to work for eventual reunification of a child*
236 *with his/her family or community if possible. This approach must therefore be carried out*
237 *within a framework of planning for permanence in the child's life which must be balanced*
238 *with understanding the need for stability of the child's life.”*

239 In the instant case, the evidence adduced shows that the child was born on 28th October 2018 and
240 his mother passed away on 5th November 2018, and that all efforts to trace his father have proved
241 futile. The child's maternal relatives are unable to take care of him and as a result, they were
242 forced to have him institutionalized in Sangaalo Babies Home. This is not in the best interest of
243 the child since he has to spend his life under institutional care which cannot provide a permanent
244 home for the infant. In any case, the maternal relatives are not willing to take on this child at any
245 one time. There is no hope of resettlement of this child to his paternal family which is not known
246 or maternal family that have confessed to their inability to take care of his needs.

247 In addition, the child is of tender age and needs urgent medical attention, parental love, care,
248 affection and stability and the fact that the petitioners are the only people ready and willing to
249 cater for his welfare, if this adoption is made in favor of the petitioners, the child will finally
250 have parental love, care and stability that he was deprived of at a very tender age.

251 It is a universal right for **every child to have parents and be raised by the parents.** Parental
252 responsibilities entail provision of a home, medical care, education, food, clothing, love, care and
253 protection which can only be given by responsible parents. The Petitioners are able and willing
254 to avail the above to the child. The infant in this case is certainly in need of parental care and

255 love apart from the Sangaalo institution that provides temporary care for destitute kids, no other
256 person from within the country has come up to offer that love to the infant. It would be against
257 the welfare principle of the child if this petition is not granted to the petitioners who have
258 showed genuine love and affection to the infant who has found the love of the mother and father
259 in the Petitioners.

260 It would be cruel to the Petitioners if they are denied the opportunity to raise the infant they have
261 fallen in love with.

262 This Court has no doubt that the Petitioners are a perfect substitute for the biological mother and
263 father of the infant and this adoption is in the best interest of the child.

264 In the result the Petition is allowed with the following orders:

265 1. **ANASTASIOS MOUTAFIS** and **GEORGIA NELLI GIANNIOTI** are appointed the
266 adoptive parents of the child **EDSON MUGAGA**.

267 2. The Adoptive parents are allowed to add their family name to the child's names.

268 3. The Registrar General of Births and Deaths is hereby directed to make an entry recording the
269 particulars of this adoption in the Adopted children's Register and to issue a certificate to
270 **EDSON MUGAGA** reflecting the parental relationship established.

271 4. The Adoption Order shall be furnished to the consular Department in the ministry of Foreign
272 Affairs.

273 5. The Adoption Order shall be furnished to the Permanent Secretary, Ministry of Gender,
274 Labor and Social Development.

275 6. Costs of this Petition be borne by the Petitioners.

276 Given under my hand and seal of this Honorable Court this 8th day of **October 2019**.

277

278 _____

279 Margaret Mutonyi

280 **RESIDENT JUDGE**

281 **MUKONO HIGH COURT**