

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

ADOPTION CAUSE No. 4 OF 2019

IN THE MATTER OF AKOTH FANICE (CHILD)

5 **AND**

**IN THE MATTER OF AN APPLICATION FOR AN ADOPTION ORDER BY
HUSTINX DOMINIQUE**

BEFORE: Hon. Lady Justice Olive Kazaarwe Mukwaya

10

RULING

The Petitioner

The petitioner, Ms. Hustinx Dominique (51) is a French citizen holding passport number 15DI82623. She was born in France on the 14th day of October, 1967 as per a copy of her birth
15 certificate attached to her affidavit and marked “B”. She is unmarried.

The petitioner has lived in Uganda since her first arrival in 2003 and currently resides at Kabulamuliro/ Sekiwunga cell Namulanda ward, Kajjansi town Wakiso District together with the child, Fanice Akoth the subject of this adoption. A copy of an introduction letter from the office of the Chairperson LC1, Ssekiwunga dated 6th November 2018 confirming this was attached to
20 the petitioner’s affidavit and marked “D”.

The petitioner is a missionary with Friends with Hope Africa and is currently employed by the same Non-Government Organisation.

The Child

Fanice Akoth was born on the 17th October 2001. Her birth certificate, which was attached to the petition and marked 'H', indicates that she was born in Soklo North, Suba District in the Nyanza Province of the Republic of Kenya. According to this document, the birth was registered on the 5 29th October 2009 and this is the date the birth certificate was issued. The father of Fanice is listed as Moses Onyor Miruka and the mother is listed as Lucky Christine Atieno Otieno. It states clearly on the birth certificate that, 'A Certificate of Birth is not Proof of Kenya Citizenship'.

In an attempt to clarify on the child's citizenship, the petitioner in paragraph 8(c) of the petition 10 asserts that the child is a citizen of Uganda. To support this assertion, 'a copy of approval of Uganda citizenship by registration' is attached and marked 'G'. Court perused this document. It is a letter dated 17th December 2018 in which the Acting. Commissioner Citizenship and Passport Control, in the Ministry of Internal Affairs Directorate of Citizenship and Immigration Control, Uganda, is writing to the Consulate, Kenyan High Commission. The gist of the 15 communication is that the National Citizenship and Immigration Board approved Ugandan Citizenship by Registration for the child Fanice Akoth. However, that to complete the process, she has to renounce her present nationality (Kenya). It is this letter that the petitioner presented as proof of Ugandan citizenship.

There is a copy of passport no. B056281 in the name of the child issued by the Republic of 20 Kenya on the 3rd December 2009 indicating that she is a Kenyan national. This court has not received any document from the Kenyan Consulate to prove that the child renounced her Kenyan nationality.

The letter from the Acting Commissioner Citizenship and Passport Control, in the Ministry of Internal Affairs Directorate of Citizenship and Immigration Control, Uganda, was clear that 25 renunciation of the child's Kenya nationality was a condition prior to acquiring Ugandan citizenship by registration.

This court finds that the child is not a citizen of Uganda. S. 46(1) of the Children Act as amended in 2016 provides for inter country adoption under which this petition falls. It provides as follows:

'A person who is not a citizen of Uganda may in exceptional circumstances adopt a Ugandan child...'

Fanice Akoth is not a Ugandan child and this court therefore has no jurisdiction to entertain an inter country adoption petition concerning her since she is a Kenyan national and the petitioner is
5 a French national.

Before I take leave of this matter however, having had the opportunity of perusing the pleadings and hearing the evidence adduced through oral evidence and I feel the need to make the following pertinent observations.

1. The petitioner who has no blood relationship with the child has lived with the child with
10 approval of her biological mother since 2008.
2. The petitioner took no legal steps to formalise her relationship with the child in the 10 years she had the child in her informal care. This is despite all the available avenues for formal guardianship available to petitioner during this time until 2016 when foreign nationals were made ineligible to apply for legal guardianship in Uganda.
- 15 3. There is evidence of the child's heart condition, but the Cardiologist was clear that the condition is stable and has been since the child had corrective surgery funded by the Petitioner in 2009.
4. The Probation and Social Welfare Officers of Namayingo District and Wakiso District who made reports in support of the petition disregarded the child's nationality. The first
20 report made misrepresentations to this court about the child being born in Namayingo District when this was an outright falsehood. The second report did not mention the child's nationality at all.
5. The petitioner has developed an undisputable bond with the child who remains in her care.
- 25 6. The child is a few months from her 18th birthday and therefore adulthood in Uganda.
7. The biological mother of the child is against the finality of adoption because it shall sever her parental rights with the child. She however, has no objection to legal guardianship which the law no longer allows for foreign nationals in Uganda.

From the foregoing, there were quite a number of falsehoods and half-truths presented to this court as facts. The claim that the child's life was in imminent danger was dispelled by the Cardiologist. The further claim that this petition was premised on her health was also upstaged by the letter from the Social worker in France, a Glaucia Goes, who stated that; 'Today, Fanice
5 who is an excellent student at Word of Life International School in Kitende Wakiso District has plans to undertake professional training which will be more feasible in France.' The Social Worker goes on to state that, 'Fanice is part of the Hustinx Family. Dominique's parents host them for holidays and festivities. Fanice has her place in the family as a grandchild, niece and cousin. This return has been prepared for over a year now and Fanice is delighted to go to France
10 with her mother Dominique'. This letter was dated 13th November 2018.

The implication is that the plans to have the child move to France did not arise out of a medical emergency but to have her join her 'family in France' and have a better Education than Uganda can provide. Adoption was apparently the means to this end. Worldwide, adoption is alternative care of last resort when the biological parents are unable to perform their parental duties towards
15 their child. Parental consent is a condition for adoption.

This court observed that the bond between the child and the Petitioner's family would not have been possible in the absence of the goodwill of the child's biological mother, who by a letter attached to the Petition and marked 'E' and dated 3rd February 2008, released her child into the care of the petitioner. The initial purpose of the release was so she could go to school, but even
20 after she finished school, the child's mother left her in the petitioner's care allowing their bond to grow and crystallise.

Under this informal arrangement, the child has grown up and been very well cared for. All this had happened without a court order of guardianship or adoption from Uganda or Kenya.

The petitioner is advised to review her options and continue to make decisions in the child's best
25 interests. She willingly placed herself in the role as the child's mother and primary care giver as a biological grandmother or Aunt would. The child prefers to remain in her care and since her biological parents do not object to the status quo, this wish should be considered by whichever court shall entertain this matter, especially since the child is less than two months away from becoming a legal adult for purposes of adoption.

This petition is dismissed for want of jurisdiction with no order as to costs.

.....

5 **Olive Kazaarwe Mukwaya**

JUDGE

Dated at Kampala this 10th day of July 2019