

**THE REPUBLIC OF UGANDA**

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

**ADOPTION CAUSE No. 61 OF 2018**

**IN THE MATTER OF THE ADOPTION OF ARTHUR SHYKA BUTARE BY GRACE**

5 **KARUHANGA BAILEY**

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

**RULING**

**The Petitioner**

The petitioner, Grace Karuhanga Bailey, a citizen of the United States of America of Ugandan  
10 descent is seeking to solely adopt her grandson, Arthur Shyka Butare, a child aged four years  
old. This Court received the affidavits of the petitioner, supported by the unequivocal consents of  
Mr. Timothy Butare, the petitioner's son and biological father of Arthur and Mrs. Pheonah  
Muteteri Butare, wife to Mr. Butare and the child's biological mother. Attached to the petition  
was the psychiatric report on the child, dated 11<sup>th</sup> June 2018 prepared by Dr. Catherine Abbo, a  
15 child and adolescent psychiatrist and senior lecturer at the Makerere University Department of  
psychiatry, under the College of Health Sciences and School of Medicine.

**The child**

By way of background, Arthur Shyka Butare was born healthy on the 13<sup>th</sup> October 2014 in  
Kampala. He is the second born child of Timothy and Pheonah Butare. He has two siblings, one  
20 older and one younger. At 14 months, he started developing autism, was officially diagnosed  
with the disease and underwent several medical interventions within Uganda and in neighbouring  
Kenya for treatment. Nothing has been able to significantly improve Arthur's condition. The  
petitioner and Arthur's parents carried him along for the court hearing and court was able to  
observe his habits. He has no articulate words and kept making sounds and shouts to  
25 communicate his needs, he was not able to make any eye contact and kept his eyes fixed on his  
tablet.

## **The Application**

In addition to perusing the petition and the accompanying documents, this court interviewed the petitioner and the mother of the child. The petitioner, Ms. Karuhanga Bailey is of Ugandan descent and a citizen of the United States of America, her passport number is 528081006. She is  
5 70 years old, retired and the only member of her household. She has been a part of Arthur's life since he was born in her role as his grandmother. When in Uganda, the petitioner lives with Arthur's family. The petitioner put her life in the USA on hold to spend a year in Uganda living with the child and his parents prior to the filing of this petition. This was under the supervision of the probation and social welfare officer, Wakiso District, Ms. Nakazibwe Mary, as provided for  
10 under S. 45 and S.46 of the Children Act as amended.

The purpose of the adoption of the child by his grandmother, the petitioner, is to enable him to access the best possible health care for managing his condition and give him the best opportunity to achieve his fullest potential since the petitioner is retired and she has a lot of time on her hands to care for Arthur. Her house is spacious and she lives fairly close to her other son and his family  
15 who also live in the USA. They were aware of the adoption proceedings and were prepared to help out where necessary.

## **The child's parents**

Arthur's mother, Pheonah Butare, is holder of Ugandan passport, BO775126, which was attached and marked 'C'. She told this court that she loved her child and she was in tears when  
20 she testified on oath that she was certain that this decision while difficult and painful, was the most practical and in the best interest of her son, Arthur. She and her husband, had done all they could to keep him happy and healthy but he needed an environment that would improve his condition, which she believed was available in the United States of America. Pheonah stated that she trusted her mother-in-law, the petitioner and she knew she loved her grandson and would  
25 take very good care of him. The two shared a room whenever she visited from the United States and lived with them.

Arthur's father, Mr. Timothy Butare, holder of Ugandan Passport B0820953, attached and marked 'D', stated in his affidavit that he had made peace with the decision. He too believed his mother would ably look after his son Arthur.

## **The child's medical condition**

Dr. Catherine Abbo, the specialist who evaluated Arthur's condition stated in her report which was attached and marked 'E', that:

5 *'Arthur Butare has a severe form of neurodevelopmental disorder called Autism Spectrum Disorder (ASD). ASD describes qualitative differences and impairments in reciprocal (back and forth) social interaction and social communication, combined with restricted interests and rigid and repetitive behaviours, often with lifelong impact. In addition to these features, children with ASD frequently experience a range of cognitive, learning, language, medical, emotional and*  
10 *behavioural problems. Arthur may need to go through psychological testing to determine his level of intellectual functioning. He has sleep and GIT disturbances. These features substantially impact on the quality of life of Arthur and his family and could lead to social vulnerability.'*

*'The good prognostic factors in Arthur include: caring parents and good physical health, no visual or hearing impairments and early attempts at intervention.'*

15 On the other hand she added:

*'Poor prognostic factors include: severe form of ASD (Autism Spectrum Disorder), no speech. Arthur has had early intervention from available facilities in Uganda and Kenya with minimal improvement registered in the core symptoms of ASD.'*

The same report outlines the goals of Arthur's parents as; *'to have him speak and grow up into*  
20 *an independent individual.'* However, the doctor in her prognosis stated;

*'ASDs, similar to other neurodevelopmental disabilities, are generally not 'curable', and chronic management is required. Although outcomes are variable and specific behavioural characteristics change over time, most children with ASDs remain within the spectrum as adults and, regardless of their intellectual functioning, continue to experience problems with*  
25 *independent living, employment, social relationships and mental health, Symptoms tend to become less severe with age but with most patients with severe ASD independent living is unlikely.'*

A more recent report, prepared by Dr. Robert Iriso, a paediatrician at SAREC Medicare Centre, Kampala dated 22<sup>nd</sup> October 2018, confirmed that Arthur had Autism Spectrum Disorder. It was attached and marked, 'J'.

It was against this background and these findings that the parents of Arthur made the decision to  
5 allow his grandmother to adopt their beloved son.

In order to ably consider this petition, this court requested for additional information to wit, a formal report from the probation and social welfare officer, an inter country home study report, and medical report of the petitioner showing her suitability to adopt the child. All these documents were received save for the inter country adoption report.

10 This Court's duty under the Children's Act, Cap 59 as amended by Act 9 of 2016 was to determine;

**1. Whether the petitioner was a suitable adoptive parent?**

**2. Whether the adoption was in the best interests of the child Arthur Shyka Butare?**

On whether the petitioner was a suitable adoptive parent, S. 45(1) provides that an adoption  
15 order may be granted to a sole applicant, where the applicant has attained the age of twenty five years and is at least 21 years older than the child. S. 46 of the Act as amended in 2016 provides that a person who is not a citizen of Uganda, may, in exceptional circumstances, adopt a Ugandan child if she has stayed in Uganda for at least one year; has fostered a child for at least one year under the supervision of a Probation and Social welfare officer (PSWO); does not have  
20 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 her country of origin will respect and recognize the adoption order.

At 70 years old, the petitioner was 66 years older than Arthur. She has no criminal record in Uganda as per the certificate of good conduct marked 'G'. This court perused the probation and  
25 social welfare report which was tendered into court marked 'H'. It was prepared by the Senior Probation and Social Welfare Officer Wakiso, Ms. Nakazibwe Mary and dated 25<sup>th</sup> May 2018. She observed that the child was a vulnerable child and that the petitioner was a blood relative to the child as his paternal grandmother. Ms. Nakazibwe stated that in the one year that the

petitioner had lived with her son's family, she had developed a strong bond with the child. She added that the child's medical condition made an adoption order the best option for the child since it would give him an opportunity to grow with his paternal grandmother who is now retired and with all the time and ability to support the child who needs a lot of special attention. In line  
5 with the National Orphans and Other Vulnerable Children Policy (2004) Principle number 2 which emphasizes making the family and community the first line of response for orphans and other vulnerable children, the petitioner is related to the child as his paternal grandmother. On the basis of family preservation under the Children Act, Ms. Nakazibwe, recommended that this Court consider the adoption of the child by the petitioner.

10 Dr. Emmanuel Mwesiga of Comfort Home Care Clinic, Nakulabye, Hoima Road, Kampala, examined the petitioner and made a report dated 23<sup>rd</sup> October 2018, attached and marked 'I'. It was his finding that she had normal cardiac function and blood pressure. He also found that she had no neurological disorders and normal muscle and skeletal function. In conclusion he found that she is a healthy, active elderly lady capable of handling her retirement duties.

15 This court finds the petitioner is a suitable adoptive parent.

**2. Whether the adoption was in the best interests of the child Arthur Shyka Butare?**

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  
20 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*

25 *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'*

Both parents of Arthur gave their unequivocal consent to the adoption. They agreed to relinquish parental rights to his grandmother, an American citizen of Ugandan descent, for better

management of his medical condition. The petitioner in her testimony before the court assured this court that she was able to look after the child because she loved him, she was available full time and her house was spacious enough.

5 There was no home study report tendered in court to support this application. However, the petitioner is the paternal grandmother of the child. She is in retirement and in good health and this court is satisfied that she will ensure that her grandson's needs are met, especially since she has no other commitments at this time of her life that would divide her attention. Mrs. Esther Mwesigye, from the Bean Stalk Day Care Nursery, Kiwatule, Kampala, where Arthur goes to school, stated in her letter of recommendation dated 25<sup>th</sup> October 2018 and marked 'K', that the  
10 petitioner is; 'a hands on grandmother, whereby she will come and feed Arthur at school and also offer to help the school where necessary.' Further still, the petitioner stated that her other son's family lives within a one hour driving distance from her house and would be able to support her in the event that it would become necessary.

I agree with the Senior Probation and Social Welfare officer, Ms, Nakazibwe that a grant of this  
15 adoption order would be in the best interests of the child.

It is accordingly ordered as follows:

1. An order of Adoption of the Child Arthur Shyaka Butare by the petitioner, Ms. Grace Karuhanga Bailey is allowed.
2. The Registrar General of births and deaths shall make an entry recording this adoption in  
20 the Adopted Children Register.
3. The Adoption Order shall be furnished to the Consular Department in the Ministry of Foreign Affairs.
4. Costs of the Petition to be provided for by the petitioner.

Dated at Kampala this 19<sup>th</sup> day of November 2018

25 .....

**Olive Kazaarwe Mukwaya**

**JUDGE**

