

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

FAMILY CAUSE No. 123 OF 2018

IN THE MATTER OF NIGEL ALONSO JARA

5 **AND**

IN THE MATTER OF A PETITION FOR ADOPTION BY MOSS NICHOLAS RODNEY

BEFORE: Hon. Lady Justice Olive Kazaarwe Mukwaya

RULING

10 **The Petitioner**

The petitioner, Mr. Moss Nicholas Rodney (42) is an Australian citizen holding passport number PA6535865. He is married to Ms. Pearl Moss. She is the biological mother to Nigel Alonso Jara, the child, who is six (6) years old. The petitioner got married to his wife, Ms. Pearl Moss on the 2nd day of August 2017 at St. John's Kyakabunga Church in Nyabushozi, Kiruhura District. A

15 copy of their marriage certificate was attached to the petition and marked "B".

They reside at Plot 17A Hanlon Road, Bugolobi Bungalows, Nakawa Division, Kampala, together with the child and their biological daughter Sofia Karungi Moss who is 5 months old. Mr. Kalinda Ben, Chairperson LC1 Bugolobi Bungalows 1 wrote a letter dated 22nd October 2018 to confirm this. It is attached to the petitioner's supplementary affidavit and marked "B".

20 The petitioner is a lawyer by profession currently working as a teacher and a freelance writer. The petition is supported by the unequivocal consent of Ms. Pearl Moss.

The Child

Nigel Alonso Jara was born on 10th January 2013 at Nakasero Hospital, Kampala. His biological mother Ms. Pearl Moss is a Ugandan Citizen and his biological father is Mr. Gerardo Jara Pascaus, a Colombian National. A copy of his birth certificate was attached to the petition and marked “B1”. Nigel’s biological father is not part of the proceedings. His whereabouts are
5 unknown and all attempts to reach him were futile. Copies of various correspondences via email, WhatsApp and Facebook were attached to the petitioner’s supplementary affidavit and marked C, D, E, F, G, H and I to prove the fruitless search for him. According to the child’s mother, Mr. Jara has not been part of the child’s life since he was born. This Court had the opportunity of interacting with the child who identified the petitioner as his father with whom he lives together
10 with his mother and baby sister, Sophia.

The Probation and Social Welfare Officer of Nakawa Division Urban Council, Ms. Cheptoris Hilda prepared a report in this case dated 23rd November 2018. The report was attached to the petition and marked “C”. In that report, she outlined the background of the child and the circumstances under which the petitioner got to know and bond with the child. She observed that
15 the child is healthy and that the petitioner has duly completed all the conditions required under the Children Act, for inter country adoption.

Ms. Cheptoris testified that the investigations that she conducted to contact the biological father of the child were futile. She added that he has never supported the child or shown any interest in his welfare. It was also her testimony that the child was introduced to the petitioner when he was
20 three years old. The petitioner has been taking care of both the child and the mother since then. Ms. Cheptoris concluded her report by recommending adoption of the child by the petitioner. It was her opinion that adoption was in best interests of the child.

The Petition

Mr. Moss is the child’s step-father. He attached a certificate of good conduct from the Uganda
25 Police Force marked “E” dated 23rd October 2018 indicating that he had no criminal record. In addition, he attached copies of his financial statements marked “D” as proof of his financial capacity to meet the daily and basic needs of the child and his family.

It was the duty of this Court to determine two issues:

- a. **Whether the petitioner is qualified to be appointed the adoptive parent of Nigel Alonso Jara?**
- b. **Whether the petition was in the best interest of Nigel Alonso Jara?**

Issue 1

5 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; in the case of an application by one of the spouses, the other has consented to the adoption.

S.46 of the Children Act as amended, provides that a person who is not a citizen of Uganda may,
10 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
15 recognise the adoption order.

Moss Nicholas Rodney is an Australian Citizen, aged 43 years old making him 37 years older than the child Nigel Alonso Jara. He has lived in Uganda since the 31st of December 2016 at Bugolobi Bungalows 1, Nakawa Division Plot 17A Hanlon Road.

The Probation and Social Welfare report detailed the bond between the child and his step father,
20 the petitioner.

The child's biological mother Ms. Pearl Moss has been married to the petitioner since 2nd August 2018 and gave her unequivocal consent to this adoption petition. The consent of the biological father could not be secured. He has not been a part of the life of the child since he was born and he remains unresponsive to all communication from the petitioner and his biological.
25 petitioner, his wife, the child and their biological daughter Sofia currently live together as a family.

Mr. Macpherson Kelley, a practicing Advocate in Australia in letters to this court dated 9th and 10th May 2019 and marked 'M' and 'L' confirmed that the petitioner's country of origin shall respect the adoption order granted in Uganda.

5 This court noted that the steps for foster care were not complied with. The circumstances of this case are that the child is under the care of his biological mother and has been since he was born. The Petitioner met the child through his mother on the 31st December 2016 and continued to relate with him until he married his mother on the 2nd August 2018. There was therefore no fostering of the child by the petitioner as envisaged under the Children Act. This court is of the opinion that the marriage between the biological mother and the petitioner provides an exception
10 for waiver of the formal fostering process. This is because the child had the opportunity to naturally bond with his mother's husband in the family unit created during their courtship and subsequent marriage.

Mr. Moss has, in the opinion of this court, provided sufficient evidence of his suitability as an adoptive parent under inter country adoption.

15 Issue 2

Whether the petition was in the best interest of Nigel Alonso Jara?

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
20 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:*

- 25 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*
5 *involved in the care of the child, and in meeting the needs of the child'*

The most outstanding part of this petition is the absence of consent of the biological father of the child, Mr. Jara a requisite under S.47 of the Children Act. He was not married to the child's mother and has not participated at all in his upbringing. In Re Micheal Lumu Adoption Cause No. 8/2000, it was stated that *the purpose of the consent under this section is to emphasize the*
10 *right of the parent over the child. His parental right should only be discarded in the interest and welfare of the child.*

In the instant petition, Mr. Moss has been living and taking care of the child since he was three years old. He is the only father the child has ever known. The petitioner and the minor have formed a bond which the petitioner is desirous of making legal by obtaining an adoption order.
15 This court interviewed the child and he identified the petitioner as his father. He is a happy and thriving child under the care of the petitioner and his biological mother. Counsel for the petitioner, Mr. John Barenzi implored this court to grant this petition, submitting that the petitioner had fulfilled the necessary requirements under the law.

This court is satisfied that the granting of this petition is in the best interests of the child, Nigel
20 Alonso Jara enough to justify the dispensation of the consent of his biological father.

I hereby make the following orders:

1. An order of Adoption of the Nigel Alonso Jara by the petitioner, Moss Nicholas Rodney is allowed.
2. The Registrar General of births and deaths shall make an entry recording this adoption in
25 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.

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Olive Kazaarwe Mukwaya

JUDGE

5 Dated at Kampala this 7th day of June 2019