

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[FAMILY DIVISION]
CIVIL REVIEW NO. 007 OF 2023
(ARISING OUT OF F.C NO. 48 OF 2019 OF JINJA HIGH COURT)
IN THE MATTER OF THE CONSTITUTION OF THE REPUBLIC OF
UGANDA.

IN THE MATTER OF THE JUDICATURE ACT, CAP. 13
IN THE MATTER OF THE CHILDREN ACT, CAP. 59 (AS AMENDED)
AND
IN THE MATTER OF CIVIL REVIEW BY TIMOTHY ALAN WOZNICK
AND HILARY JEAN WOZNICK.

RULING BEFORE HON. LADY JUSTICE CELIA NAGAWA.

1.0. Introduction.

1.1. The applicants Timothy Alan Woznick and Hilary Jean Woznick brought this Application by Notice of Motion under Section 82 of the Civil Procedure Act, Cap. 71 and Order 46 Rules, 1, 2, 3, 4 and 8 of the Civil Procedure Rules SI 71-1 seeking orders that;

1. This Honorable Court be pleased to review it's ruling in Family Cause No. 48 of 2019 by varying deleting and or amending the ruling to provide as follows:-
2. That Katumba Francis' biological mother Josephine Mbabazi is alive.
3. That Josephine Mbabazi consents to the Adoption of her biological son Katumba Francis by the Applicants herein and



further vests all her parental rights and duties and obligations over her son, to the Applicants herein.

4. Costs of this Application be provided for.

1.2. The grounds in support of this application are summarized in the Notice of Motion which is supported by an affidavit sworn by co-applicant Hilary Jean Woznick and Josephine Mbabazi, biological mother of the child. Briefly, the grounds are that;

- i. On 26th April, 2020, the Applicants were appointed adoptive parents of the children Katumba Francis and Nakitende Jenny Aisha Namugeri by the High Court of Jinja.
- ii. One of the considerations for the Court in granting an adoption of Katumba Francis to the applicants was that he was an orphan, having lost his mother at birth. His mother has been located and she consents to the adoption of her son by the Applicants herein.
- iii. If the ruling of this Court is not reviewed and amended as prayed, the best interests of the child Katumba Francis will be jeopardized.

2.0. Representation.

2.1. The Applicants were represented by Counsel Mugume Isaac of M/S Mugume & Company Advocates, Kampala.

3.0. Background.

3.1. The applicants were jointly appointed adoptive parents of Katumba Francis and Nakitende Jenny Aisha Namugeri. The court considered that fact that Katumba Francis was an Orphan, who lost his mother at birth and his biological father Ali Konde Sekitoleko had consented to the adoption having failed to look after him.



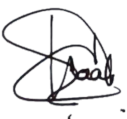
- 3.2. Once the applicants applied for the child's Visa at the American Embassy, their application was declined on grounds that Francis' mother was alive and did not give consent to the adoption. Following this the applicants hired a private investigator who found out that indeed the child's biological mother was alive and her true identity was Josephine Mbabazi and not Faridah Mbabazi.
- 3.3. Currently, Josephine Mbabazi has been contacted and she has consented to the adoption of her biological son Katumba Francis by the Applicants and further vests all her parental rights, duties and obligations over her son to them.

4.0. Issues for Determination by this Court.

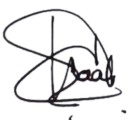
1. Whether this Honorable Court has the Jurisdiction to review the judgement in Family Cause No. 048 of 2019?
2. Whether the Applicants have sufficient grounds for the Application to be granted?

5.0. Submissions by Counsel.

- 5.1. In reference to issue 1, Counsel submitted that the application ought to have been filed at Jinja High Court where the matter originated, however, under the High Court of Uganda, Administrative Circular No.2 of 2020 on the handling of Inter-Country Adoptions at the High Court issued on 3rd August 2020, the Principal Judge directed that all inter-country adoption matters shall be handled by the Family Division of the High Court, Kampala, all High Court Circuits to cease handling intercountry adoption applications among others. It is therefore against that background that this Honorable Court has the Jurisdiction to review this Family Cause.



- 5.2. On the second issue, counsel relied on **Section 82 of the Civil Procedure Act, Cap. 71** and cited the case of **FX Mubuke V UEB High Court Misc. Application No. 98 of 2005**. He stated that new information on the child's mother had been discovered that the child's mother was still alive and that in fact she was not known as Faridah Mbabazi but Josephine Mbabazi.
- 5.3. The child's mother deposed an affidavit stating that she did not hear about her child until on 27th March, 2021, a day before she left for Saudi Arabia, when she learnt that her child was institutionalized and subsequently adopted. Mr. Hillary Jean Woznick testified that a Children's home by the name, "Welcome Home" which was fostering the child, informed them that the child's mother was Faridah Mbabazi and that she had passed on at the child's birth. He further stated that they visited the child's mother's home and were shown a grave where she was buried. The child's father was present during this visit and informed them that he had failed to look after the child upon the mother's death. This was the consideration upon which the adoption order was granted, the fact that the child was an orphan.
- 5.4. The applicants averred that upon investigations carried out by the American Embassy, they found out that the child's mother was alive. The Applicants then also hired a private investigator who confirmed this information, that indeed the child's mother was alive. The applicants further submitted on Ground 3 that upon being found, the child's biological mother gave her consent to have the child adopted. It was the submission of the applicants that this amounted to newly discovered evidence warranting a Review.



5.5. As such, the applicants contend that if this Review is not granted, the best interests of the child would be jeopardized. The child's mother works in Saudi Arabia and is unable to look after the child or form a bond with him. The child has already formed a bond with the applicants and as stated by the child's biological mother under paragraph 24 of her witness statement, she will never build a bond with the child. It is on this premise that the applicants pray for Review of the ruling in Family Cause No. 048 of 2019.

6.0. Resolution of Issues.

Issue 1: Whether this Honorable Court has the Jurisdiction to review the judgement in Family Cause No. 048 of 2019?

6.1. The High Court has unlimited original jurisdiction in all matters under Article 139 (1) the Constitution of the Republic of Uganda, Section 14 (1) the Judicature Act, Cap. 13, Section 44 (1) (b) of the Children Act, Cap. 59, Order 46 of the Civil Procedure Rules, SI 71-1 and Section 98 of the Civil Procedure Act, Cap. 71. The Administrative Circular No.2 of 2020, gave an administrative directive to handle all the adoption causes. Therefore, this Court has the Jurisdiction to handle all matters relating to Inter-Country Adoption. This issue is resolved in the Affirmative.

Issue 2: Whether the Applicants have sufficient grounds for the Application to be granted?

6.1.1. The jurisdiction of Court to review its Orders/Judgements is provided for under Section 82 of the Civil Procedure Act, Cap.71 which provides that;



“Any person considering himself or herself aggrieved— (a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or (b) by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order on the decree or order as it thinks fit.”

6.1.2. Section 82 of the Civil Procedure Act has been enlarged by Order 46 Rule 1 of the Civil Procedure Rules which provides that;

i)Any person considering himself or herself aggrieved-

(a) By a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or

(b) By a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter of evidence which, after the exercise of due diligence, was not within his or her knowledge or could not be produced by him or her at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him or her, may apply for a review of judgment to the Court which passed the decree or made the order.

6.1.3. As per the provisions of Order 46 Rule 1 (b) of the Civil Procedure Rules, applications for review can be filed by any person considering himself/herself aggrieved by a decree or order under the following circumstances which include: -



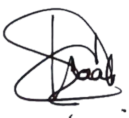
- (a) Discovery of new and important matters of evidence previously unknown or could not be produced at the time when the decree was passed or order made;
- (b) Some mistake or error apparent on the face of record.
- (c) For any other sufficient reason, but the expression “sufficient” should be read as meaning sufficiently of a kind analogous to (a) and (b) above See **Re Nakivubo Chemists (U) Ltd (1979) HCB 12**

6.1.5. The principles mentioned above followed by court governing the discretion to allow or decline an application for review have been summarized in a number of decided cases and were laid down as held in the case of **FX Mubuke Versus UEB High Court Misc. Application No.98 of 2005.**

6.1.6. The Applicants based their argument on the ground of discovery of new and important evidence which after exercise of due diligence was not within the applicants’ knowledge or could not be produced by him or her at the time when the decree was passed or the order made.

6.1.7. It was the Applicants’ assertion that they did not know that the child’s (Katumba Francis) mother was alive at the time when the Adoption Petition was made. The adoption petition was premised on the fact that the child’s mother had died during child birth and his father was unable to look after him.

6.2. During her testimony, the child’s mother Josephine Mbabazi stated that she was aware of the previous adoption attempts. Two attempts



had been made to have the child adopted. According to her, the child was born on 24th February, 2023, (*the birth certificate reflects 10th February, 2013*) she stated that she participated in all the adoption processes. She also stated that she lived with the child until March-April, 2014 before she travelled to live and work in Saudi Arabia in 2021. Prior, to her travel to Saudi Arabia, she was living and working in Lugazi as a cleaner for company that cleaned homes, hospitals and schools. She has got other children aged 13 and 7 years old all with different fathers.

6.2.1. It was her testimony that according to what is happening at the moment she accepted the adoption. She is not home at the moment and the applicants have been looking after the child. She accepted that they take on the parental role. Mbabazi signed the documents in Kampala though she was not sure of the place but it was in the lawyer's chambers. This was in April, 2023.

6.2.2. Ali Konde Sekitooleko, the father to the child consented to the adoption and during trial he stated that the child's mother Mbabazi Faridah passed on while giving birth to Katumba at home in Wakisi, Buikwe District on 5th March, 2013 (*the child was born on 10th Feb, 2013 as per the birth certificate*), he exhibited a death certificate for the late Mbabazi Faridah. This was corroborated by the applicants who contended that they were taken to the child's mother's grave.

6.2.3. During his testimony Ali Konde Sekitooleko stated that he is a resident of Wakisi, Buikwe District, a peasant farmer, who earns 80,000/= in 3 months, he has a small house in which he resides but rents the land where he cultivates, he has a family comprising of a wife and 3 children other than Katumba. He did not have any objections for the petitioners



to adopt his son, in as much he seemed an able bodied man he felt not capable to look after his son, because his mother had died.

6.2.4. During hearing of this application, Mr. Mugume Isaac Counsel for the Applicants told this court that the “adoption process was all stage managed”. Meaning stage managed to set up a grave or identify a grave and state that it was the grave for the adoptive child’s mother then “Faridah Mbabazi”. It also meant that the death certificate that accompanied that application was not genuine and the process it took to declare to the National Identification Registration Authority (NIRA) the death of the mother –Faridah Mbabazi, and in all this the mother told court that she was involved in the all processes. Her true name being Josephine and not Faridah Mbabazi and stating that she was dead and yet she was alive. At the time of presenting this Petition, the mother was still staying in Uganda.

6.2.5. This Application for Review is premised on the discovery of new and important evidence which after exercise of due diligence was not within the applicants’ knowledge or could not be produced by them at the time when the decree was passed or the order made. It has come to the court’s knowledge that this information was not undiscoverable but rather it was known and kept from this court until the American Embassy conducted investigations that hindered the Applicants’ visa application. This court cannot condone or aid in Fraud.

6.3. Fraud was defined in the case of **Zabwe Fredrick Versus Orient Bank & Others SCCA No. 4 of 2006**. According to this case fraud constitutes;

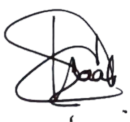
“An intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to



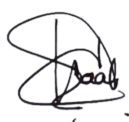
surrender a legal right. A false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which deceives and is intended to deceive another so that he shall act upon it to his legal injury.”

6.4. There was fraud and misrepresentation while petitioning court in Family Cause No. 48 of 2019 at Jinja High Court and this resulted into granting the Applicants an Adoption Order over the child Katumba Francis as being an orphan. Mr. Mugume Isaac, participated in the previous two (2) applications in Jinja High Court for the same child and same applicants. The paperwork was presented by the lawyer in consultation of his client. He is the same lawyer who has presented this application which he previously said was stage managed. This court cannot thereby sanction this misrepresentation. The court sited in Review will correct its mistakes and those mistakes must be so apparent and so obvious. However, the court will not sit in Review to correct fraudulent representations made in presentation of a petition. This is an egregious waste of court's time and resources.

6.5. On 25th November, 2019 at 11: 36am Counsel Isaac Mugume appeared in Court to present Adoption Cause No. 48 of 2019 and stated that the petitioners were re applying, he confirmed to court that this was the second attempt to adopt the child, the first application had been declined by the court for not fulfilling the intercountry adoption requirements. On this same date, counsel Mugume confirmed to court that the mother of the child (Katumba) had since passed on (deceased) and that the death certificate was on court record. He further contended that he had explained to the parties the implication of this adoption and the probation officer had equally done the same.

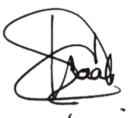


- 6.6. It is offensive to a system of Justice by which the courts are not only the handmaidens of Justice, but also act as wise parents acting on behalf of the child in their best interests in the widest meaning of the term. (**Nakaggwa Vs Kigundu (1978) HCB 310**). The court is at all times guided by **Section 3 of the Children Act, Cap. 59 (as amended)** which provides that; the welfare of the child shall be of paramount consideration whenever the state, a court, a tribunal, a local authority or any person determines the question in respect to the upbringing of the child, the administration of a child's property, or the application of any income arising from that administration. In making decisions affecting children, the court relies of the evidence presented by the parties. Therefore, where the parties present false information to the court, they cannot seek to come to the same court to correct its mistakes/ fraudulent representations.
- 6.7. This court had an interaction with the child Katumba Francis who stated that he is 10 years old, a learner at Buddo Junior School since May, 2023, previously he attended Heritage International, during his previous holiday he had stayed with an aunt Immaculate in Matugga and he was visited at school by his former school counsellor. Meaning that during the previous term the adoptive parents were unable to stay with him and unable to visit him at the boarding school at the moment he is the hands of other people.
- 7.0.** This court is cognizant of the fact that Adoption is a means by which children are given an opportunity to start again and for many children, adoption may be their only chance of experiencing family life. (**Bromley's Family Law 12th Edition at page 720**) It is for this reason that the considerations for Adoption are very strict and court expects



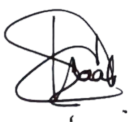
and requires all officers of the court and petitioners to come to this court with sincere intentions and clean hands.

- 7.1. Upon presentation of this application for review, this court has come to learn about the fraud and misrepresentation that was presented before this court. Mother of child being Faridah and yet she is Josephine Mbabazi, and her being dead and yet she is alive, with a death certificate and passport at the same time. To prove the fact that the child is an orphan.
- 7.2. There are exceptional circumstances where an adoption order may be rescinded where the adoption procedures involved a fundamental defect.
- 7.3. Section 46A of the Children Act, Cap. 59 as amended provides for the Rescission of an adoption order, under Section 46A (2), provides that, an adoption order may be rescinded only if; (a) Rescission of the order is in the best interest of the child. (b) **The order was obtained through fraud or misrepresentation and section 46A (3)** where an adoption order is rescinded; the adoption order shall cease to apply in respect of the child concerned; and all responsibilities, rights and other matters which had been previously terminated by the adoption order in respect of the child shall be restored.
- 7.4. In this case, consideration for rescinding the court order is that the Adoption order was obtained through misrepresentation by the child's relatives. This is an inter-country adoption which by law under **Section 46(6) of the Children Act** shall be considered as the last option available to orphaned, abandoned or legally relinquished children, along a continuum of comprehensive child welfare services.



By law, the standard for this adoption is high as the court acts as the child's guardian/parent.

- 7.5. The child in this application was adopted on the basis that he was an orphan whereas not. During his stay at the orphanage his father Ali Konde continued to visit him and even make financial contributions to his welfare meaning that his father never abandoned his son. The father lied to the orphanage so that he could get the child accommodation (home care) and protection.
- 7.6. This adoption process was so seriously flawed as to constitute a breach in the adoption process. The biological mother because of the untruthfulness in the petition was not interviewed by court, no sworn affidavit is on record since she was presumed dead and yet in actual sense she was alive and did not consent. It is at this time after the investigations that she wants to give her consent.
- 7.7. In such cases, an order will not be made again, if the initial order was made under a false premise. The mother's consequent lack of consent and alleged death went "to the very root of the adoption process".
- 7.8. Given the circumstances surrounding this application for review a return to the situation that existed before the adoption order, namely that the birth parents' status as both parents and as parents with parental responsibility is reinstated.
- 7.9. There are no sufficient grounds for this application to be granted. Accordingly, due to the misrepresentation, the Adoption Order granted under F.C No. 48 of 2019 will be rescinded.
- 7.10. As I conclude, ordinarily, Adoptive parents should feel protected from having their adoption orders set aside due to an injustice, but should



parents be entitled not to have their parenthood set aside based on false evidence?

8.0. Conclusion.

8.1. In the final result, the court decides as follows:-

- 1.This Ruling and orders of this Honorable Court in Family Cause No. 48 of 2019 are hereby set aside.
- 2.The Adoption order granted to **TIMOTHY ALAN WOZNICK AND HILARY JEAN WOZNICK** is hereby rescinded in respect to the child **KATUMBA FRANCIS**.
- 3.All responsibilities, rights which had been previously terminated by the adoption order in Family Cause No. 48 of 2019 respect of **KATUMBA FRANCIS** are hereby restored.
- 4.The Registrar of Births and Deaths is hereby directed to cancel the entry in Respect to the child's adoption.
- 5.The parents of Katumba Francis (child) shall have full parental responsibility over their son.
- 6.Director Criminal Investigations Department (CID) should investigate both parents of the child (Ali Konde Sekitoleko and Josephine Mbabazi) and the lawyer (Mugume Isaac) who was involved in matter with a view of preferring criminal charges against the culprits.

Dated, signed and delivered by email this 29th day of September, 2023.



**CELIA NAGAWA
JUDGE**