

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**ADOPTION CAUSE NO. 44 OF 2023**  
**IN THE MATTER OF THE CHILDREN (AMENDMENT) ACT 2016**

**AND**

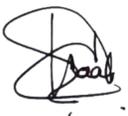
**IN THE MATTER OF ADOPTION OF BRIAN MBASAN BY ROBERT  
MATTHAN MBASAN AND ERICA LYNN MBASAN**

**BEFORE: HON. LADY JUSTICE CELIA NAGAWA**

**RULING**

**1.0 Introduction.**

1. This ruling relates to a Petition that was filed in this Court by Robert Matthan Mbasan and Erica Lyn Mbasan (the Petitioners) for the adoption of Brian Mbasan (the child). The orders sought are;
  - a) An order for the adoption of Brian Mbasan be made in favor of the petitioners under the Children Act with all the necessary directions.
  - b) That the Petitioners be allowed to travel with the child to the United States of America and he lives with them.
  - c) The costs of this petition to be provided for by the Petitioners.
  - d) Any such further relief.
2. The Petitioners were represented by Counsel Ibalu Diana of M/S Volens Advocates, Kampala.



**2.0 Issues for determination before this Court.**

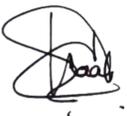
- 1. Whether the Petitioners' qualify to be appointed the Adoptive Parents of the Child?**
- 2. Whether the Petition is in the best interest of the child?**

**3.0 Background of the Child.**

- 3.1 The Child who is the subject of this petition is aged 15 years old and a Ugandan male. He was abandoned by his biological mother, at his grandmother's home a one Rose Nambi when he was six months old. The child's biological mother has never made attempts to visit the child and neither have her relatives.
- 3.2 The child's biological parents are Aketch Rachel and Wafula Owen Ronald. He was conceived when his parents were still in school. All efforts to find his biological mother and her parents such as Notices placed in the Monitor Newspaper have amounted to nothing.

**4.0 Background of the Petitioners.**

- 4.1 The Petitioners, Robert Matthan Mbasan and Erica Lynn Mbasan are a married couple, they got married on 28<sup>th</sup> October, 2015 at Kitgum District Local Government. Robert Matthan Mbasan is a male adult Ugandan and a Permanent Resident of United States of America and Erica Lynn Mbasan is a female adult citizen of the United States of America, originally from Beacon, New York, USA. While in Uganda, the Petitioners reside in Garuga, Bulenga Mbiru Cell, Entebbe Wakiso District.



## **5.0 How the Petitioners learnt about the Child.**

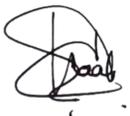
5.1 The Petitioner Robert Matthan Mbasan is the child's paternal uncle. The child's father Ronald Owen Wafula is his brother. The Petitioners have lived with the child since 2015 when they got married and have fostered him by paying his school fees, and also making sure he has basic needs.

## **6.0 Evidence of the Petitioners.**

1. The Petitioners are permanent residents of the United States of America (USA). The 1<sup>st</sup> Petitioner is a citizen of Uganda while the 2<sup>nd</sup> Petitioner is a citizen of the United States of America. Copies of the Petitioners' National Identity, passports and Permanent Residence are hereto attached and introductory letter from the Local area chairman is attached and marked **"PEX 1 to PEX 5"**.
2. The petitioners were married on the 28<sup>th</sup> October, 2015 and have 3 children. The marriage certificate is attached and marked **"PEX 6"**.
3. The Petitioners have a combined annual income of United States Dollars Two Hundred Thousand (US \$ 200,000) and they contend that they will thus be able to take care of the child. They attached copies of their proof of employment and our financial statements are attached and marked **"PEX 7"**.
4. The child is 15 years of age and his birth certificate and medical reports are attached and marked **"PEX 8 & 9"**.
5. A missing person's report was made to Ndeeba Police Station under case SD REF: 40/27/06/2023 attached and marked **"PEX 10"**.



6. The efforts to trace the child's biological mother such as the Advertisements in the Monitor Newspaper are attached and marked **"PEX 11"**.
7. The petition has been consented to by the Petitioners and the child and their consents to the adoption are attached and marked **"PEX 12"**
8. A Copy of the Report from the Probation and Social Welfare Officer is attached and marked **"PEX 13"**.
9. The Petitioners further attached police clearance certificates, certificates of good conduct and reports from the Commissioner of Office and Family Services of New York state proving that they have no criminal history. **"PEX 14"**.
10. The Petitioners have in preparation for adoption attended counseling and guidance in addition to special trainings on adoption. They attached a certificate in proof of this marked **"PEX 15"**.
11. The petitioners also attached family photos with the child marked **"PEX 16"**.
12. They also provided court with recommendations from family and friends stating that they are suitable, fit and proper persons to adopt the child. They are attached and marked **"PEX 17"**.
13. The Petitioners were subjected to a home study reporting the USA to determine if they were suitable adoptive parents. It is attached and marked **"PEX 18"**.
14. The Petitioners also attached a recommendation from their home church marked **"PEX 19"**.



15. The Petitioners also attached copies of their medical reports to show that they are in good health marked “**PEX 20**”
16. They attached copies of the Post-Adoptive Requirements and Post Adoption letter marked “**PEX 21**”.

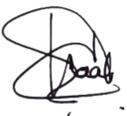
## **7.0 Written Submissions**

7.1 Learned Counsel, Ibalu Diana filed written submissions citing a number of authorities that have assisted me in determining this Petition. I have carefully perused the record and considered the submissions of learned counsel. I have also read a number of authorities from this Court on Inter Country Adoption. What runs through all the authorities is the fact that the law and the principles in this area are well settled.

## **8.0 RESOLUTION OF ISSUES**

### **1. Issue 1. Whether the Petitioners are suitable to be declared the adoptive parents of the child?**

**8.1.1** Adoption has been defined as the creation of a parent-child relationship by judicial order between two parties who are not related, the relation of parent and child created by law between persons who are not in fact parent and child. **See 55 Bryan A Garner, Black’s Law Dictionary, (9<sup>th</sup> Edn. A. Thomson Reuters Business, 2009) 50.** It is the legal process through which an individual or a couple assumes the legal rights and responsibilities of a parent for a child who is not their biological offspring. Adoption creates a legal parent-child relationship between the adoptive



parent(s) and the child, severing the legal ties between the child and their biological parent(s) or previous legal guardians.

**8.1.2** An Adoption creates a lifelong relationship of parenthood between a child and the adoptive. **See the case of Ayat Joy –VS- Genevive Chenekan Obonyo & Another, High Court of Uganda, and Adoption Cause No. 052 of 2002.**

**8.1.3** The court acknowledges that this is an Inter-country adoption as the parties are permanent residents of the United States of America and the 2<sup>nd</sup> Petitioner is a citizen of USA. In accordance with **Section 44 (1) of the Children Act, Cap. 59** where either the child or the applicant is not a citizen of Uganda, the application shall be made to the High Court of Uganda.

**8.1.4 Section 45(1) (a) of the Children Act (as amended)** 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 the age of twenty-Five (25) years and is at least twenty-one (21) years older than the child.

8.1.5 The Petitioners are 37 and 40 years of age respectively and are both 21 years older than the child, they satisfy the requirement for age under **Section 45(1) (a) of the Children Act.**

8.1.6 The evidence on record shows that the Petitioners are legally married as indicated in a copy of their certificate of marriage attached to the petition and marked “**PEX 6**”. The Petitioners were married on 28<sup>th</sup> October, 2015.

8.1.7 **Section 46 (1) (a) and (b) of the Children Act (as amended)** provides that ‘a person who is not a citizen of Uganda may in



exceptional circumstances adopt a Ugandan child, if he or she has stayed in Uganda for at least one year and fostered the child for at least one year under the supervision of a Probation and Social Welfare Officer. The Petitioners got married in Uganda in 2015 and they aver that they have fostered the child since then taking care of all his needs. Furthermore, the Petitioners and the child were presented before the Alternative Care Panel on 28<sup>th</sup> July, 2023 where they received approval to file this adoption petition.

8.1.8 **Section 46 (c) of the Children Act, Cap 59 (as amended)** provides that the Petitioners must have no criminal record. The petitioners attached police clearance certificates, certificates of good conduct and reports from the Commissioner of Office and Family Services of New York state proving that they have no criminal history. **“PEX 14”**.

8.1.9 **Section 46 (d) of the Children’s Act, (Supra)** provides that the Petitioners must have a recommendation concerning their suitability to adopt a child from his or her country’s Probation and Welfare Office or other competent authority. The petitioners were subjected to a home study reporting the USA to determine if they were suitable adoptive parents. It is attached and marked **“PEX 18”**. They were found to be suitable adoptive parents.

8.1.10 **Section 46 (2) of the Children’s Act, (Supra)** is to the effect that the Probation and Social Welfare Officer referred to in subsection (1) (b) shall be required to submit a report to assist the Court in considering the application; and the Court may, in addition, require some other person or authority to make a report in respect of the



application. A Copy of the Report from the Probation and Social Welfare Officer is attached and marked “**PEX 13**” compiled by the Mukalazi Joanita Nalwoga the Senior Probation and Social Welfare Officer of Wakiso District in which report she recommends the Petitioners as suitable adoptive parents.

8.1.11 **Section 46 (e) of the Children’s Act (Supra)** requires that the Petitioner satisfy the court that his or her country of origin will respect and recognize the adoption order. The Petitioners affirmed that the Government of the United States of America will respect and recognize the order of this Honorable Court.

8.1.12 **Section 46 (6)** states that inter country adoption shall be the last option available to orphaned, abandoned or legally relinquished children, along a continuum of comprehensive child welfare services. The child, the subject of this petition was abandoned by his biological mother, at his grandmother’s home a one Rose Nambi when he was six months old. His biological father is unable to look after him. The child’s biological mother has never made attempts to visit the child and neither have her relatives. The child has been in the care of his paternal grandmother who is no longer able to care for him. The 1<sup>st</sup> Petitioner is his uncle and together with the 2<sup>nd</sup> Petitioner, they have cared for the child. Despite the advertisements made in the Monitor newspaper and the Missing person’s report marked “**PEX 10 and PEX 11**” that were presented to this court, the child’s maternal family has not come up to care for the child and provide him with the home and care he requires. The court is satisfied that this adoption order is not made in vain and is not in



pursuit of an illegal transaction. Court therefore finds that the Petitioners have duly satisfied the legal requirements under **Section 46(2) of the Children's Act, Cap 59**.

8.1.13 According to **Section 47 (1) of the Children Act Cap 59**, the consent of the parents of the child if known, is necessary for the adoption order to be made, but the consent may be revoked at any time before the pronouncement of the adoption order. The child's biological father, Robert Matthan Mbasan (1<sup>st</sup> Petitioner) consented to the adoption and his consent is marked "**PEX 12**" on the Petitioner's affidavit in support of the Petition. The child's mother was not found and this court is empowered to dispense with the consent required if the person incapable of giving it as under **Section 47(2)** of the same Act.

8.1.14 **Section 47 (7) of the Children Act Cap 59 (as amended)** states that where it appears to the court that any person who is not the parent of the child has any rights or obligations in respect of the child under any order of the court or agreement or under customary law or otherwise, the court may require the consent of that person before the adoption order is made. The child has been in the care of his paternal grandmother, Rose Nambi who also consented to this adoption and her consent is also marked "**PEX 12**".

8.1.15 It is this court's finding that the Petitioners have satisfied all the legal requirements for inter country adoption of children.



2. **Issue 3. Whether the petition is in the best interest of the child?**

8.2.1 Whenever any court is making decisions concerning children, the Welfare Principle is paramount. The determination whether the prospective adopter is a suitable parent is based on a finding that an adoption is in the best interest of the child. The law requires the focus to be placed on the best interest of the child, rather than the interests of the biological parents, adoptive parent(s) or any one else.

8.2.2 This principle is enshrined under **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.

8.2.3 **Section 48 (1) (b) of the Children Act (Supra)** is to the effect that the adoption order if made will be for the welfare of the child, due consideration being given to the wishes of the child having regard to his or her age and understanding.

8.2.4 **In Re Mcgrath (infants) 1893 Ch 143 at 148**, Lord Justice Lindley stated that "The welfare of the Child is not measured by money nor physical comfort only. The word welfare must be considered in the widest sense. The moral and religious welfare of the child must be considered as well as its physical wellbeing. Nor can ties of affection be ignored."



8.2.5 The term welfare was defined in the case of **Nakaggwa Vs Kigundu (1978) HCB 310** to mean that all circumstances affecting the well-being and upbringing of the child have been taken into account and the Court ought to do what a wise parent acting on behalf of the Child ought to do.

8.2.6 In considering the Child's best interest, court must consider the Child's ascertainable wishes. **Section 48 (1) (b) (ibid)** is to the effect that the adoption order if made will be for the welfare of the child, due consideration being given to the wishes of the child having regard to his or her age and understanding. **In Re D (Minors) (1981) F.L,R 102**, the ascertainable wishes of the Child were said to be a weighty factor in determining whether an adoption order should be made. The child in question is 15 years old. He is able to state what his wishes are with clear understanding. The Child consented to the adoption and this is evidenced by **"PEX 12"** attached to the petitioner's affidavit in support of this petition.

8.2.7 This court, acting as the child's guardian and acting in his best interests will consider the child's particular needs as a determining factor in considering his welfare. At this age, the child requires emotional support, love, care and attention from family, the child also requires parental guidance and nurturing, all of which would fall to the adoptive parent. The child's current care taker and guardian is of advanced age and unable to look after him and so are his parents, especially the mother's whereabouts being unknown.

8.2.8 The Petitioner presented proof of employment stating that he works as a permanent part-time employee at FedEX Express and his wife



works at Response Crisis Centre as a Lifeline Counselor. They presented proof of their income vide “**PEX 7**” showing that they will be able to financially care for the child. They also presented recommendations from Alberto Aviles and Mildred Rivera stating that they are fit and proper persons to be appointed as adoptive parents to the child. These recommendations are marked “**PEX 17**”. The petitioners also testified that they had a relationship with the child presenting family photos in evidence of this marked “**PEX 16**”. The court is satisfied that the child’s particular needs will be catered for and he will be provided with the opportunities for family love and affection, and also opportunities for Higher learning, thereby giving him the best shot at a bright future.

8.2.9 The Petitioners are free from any communicable, physical or mental impairment that could endanger the child. They presented copies of their medical reports and those of their biological children marked “**PEX 20**”. The child will therefore be raised in a safe and healthy environment.

8.2.10 The Petitioners also presented to this court with a clear guardianship plan in case anything were to happen to them. The petitioners demonstrated preparedness to adopt a child and provided this court with certificates of training marked “**PEX 15**”.

8.2.11 This child should be raised within a family that loves and cares for him, one where his needs are catered for. The Petitioners are not only able but willing to take care of the child, and offer him the parental care that he requires to thrive and grow. The child will therefore be raised in a loving, safe and healthy environment. It is



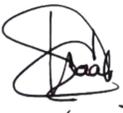
in the child's best interest to have parents. I therefore find the placement of the child in permanent custody of the Petitioners to be in his best interest.

8.2.12 In the circumstances and for the forgoing reasons, I find that this Petition has met the conditions for grant of an Adoption Order. I am satisfied that the Petitioners have complied with the legal requirements to adopt the child, and that the adoption is in the best interest of the child.

## **9.0 Conclusion.**

1. The Petitioners have met all the conditions as provided for under **Section 48 of the Children Act, (Supra)** and this court hereby allows this Petition with the following orders;

- a) The Petitioners **ROBERT MATTHAN MBASAN AND ERICA LYN MBASAN** are hereby appointed the adoptive parents of the child **BRIAN MBASAN**.
- b) The Parental rights of all others in respect to the child **BRIAN MBASAN** not previously terminated, are hereby terminated.
- c) The Petitioners **ROBERT MATTHAN MBASAN AND ERICA LYN MBASAN** shall have exclusive care, custody and control of the child, **BRIAN MBASAN** free from claims or hindrances of all others, and shall be held responsible for his maintenance, education and support.
- d) The Registrar General of Births and Deaths is hereby directed to make an entry recording this adoption in the Adopted Children Register.



e) This Adoption Order shall be furnished to Consular Department  
in the Ministry of Foreign Affairs.

f) Costs of this petition shall be met by the Petitioners.

**I so Order.**

***Dated, Signed and Delivered by email this 22<sup>nd</sup> day of  
September, 2023.***



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**CELIA NAGAWA  
JUDGE**