

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MAKINDYE, KAMPALA
(FAMILY DIVISION)

ADOPTION CAUSE- NO. 036 OF 2023

**IN THE MATTER OF THE CHILDREN'S ACT CAP 59 AND RULE 8 OF
THE ADOPTION OF CHILDREN RULES S.1 59-1**

AND

IN THE MATTER OF ADOPTION OF JOYCE AND KEVIN MUSOKE


AND

**IN THE MATTER OF A PETITION FOR ADOPTION BY KONSTANTINOS
FRANTZESKAKIS AND ALODIA PAGEO CABRERA**

Before: Justice Ketrah Kitariisibwa Katunguka.

Ruling.

Introduction.

1. Konstantinos Frantzeskakis and Alodia Pageo Cabrera are husband and wife who have petitioned this court for orders of adoption of the minors named Joyce and Kevin Musoke ;they shall be referred to as the 1st and 2nd petitioners respectively and together as ‘the Petitioners’; They seek that all necessary directions be made; an order be made that the Petitioners give the children new names as follows; Joyce to be named as **Loanna Frantzeskaki** and Kevin Musoke to be named **Alexandros Frantzeskakis**; such further and other orders as the nature of the case may require;
2. The Grounds of the Petition are in the Petition and the Affidavits in support deposed by the Petitioners and briefly that the petitioners are a married couple adult Nationals of Greece and Spain respectively, of sound mind, aged 40 and 38 years respectively; holders of Passports No. AT3525836 and Passport No. 

PAB802587 respectively; they are desirous of adopting the two children one named Joyce aged 2 years and Kevin Musoke aged 1 year under the provisions of the Children Act (Cap. 59); the Petitioners are currently residing in Kawotto Cell B Kitende Ward, Kajjansi Town Council Wakiso District; with a permanent residence in Athens-Greece; they are gainfully employed -the 1st petitioner is a businessman dealing in real estate while the 2nd petitioner is a teacher;

3. They came to Uganda in August and July 2022 respectively with the intention of adopting children who do not have capable parents or relatives to take care of them; they expressed their interest in adopting Ugandan children by making an application for fostering to the Probation and Social Welfare Officer on the 10th day of August, 2022; the Probation and Social Welfare Officer connected them to Chrystal Children's Centre where Kevin Musoke aged 3 months by then was identified and at Tereza Children's Home where Joyce aged 1 and half years by then was identified; the Petitioners kept on visiting the children while they were still at their respective Children's homes and grew very fond of them.
4. Joyce was abandoned by an unknown person at Mutundwe and was picked up by a resident of Mutundwe by the name Olee Wikam who reported a case of child abandonment at Nateete police station SD ref: 74/15/11/2021; the Police later handed over Joyce to Tereza Children's Home under the instructions of the Probation officer on the 15th of November 2021; at the time of the abandonment she could not be identified by name so Tereza Children's Home named her Joyce; on the 12th of February 2022 an advertisement was ran in the New Vision Newspaper and it did not yield positive results; a newspaper advertisement was later ran by Tereza Children's Home in Bukedde Newspaper on the 22nd of August 2022; it also did not yield positive results regarding the whereabouts of the parents.
5. The police carried out investigations in August 2022 and the findings did not yield any positive results; on the 24th March, 2023 another advertisement was ran in the New Vision newspaper and still it did not yield positive results; In April 2023 a second police investigation was carried out but did not reveal the whereabouts of the parents.
6. Kevin was discovered abandoned in a pit in Kitemu-Kivu in Kyegera town council; he was picked by a certain Pastor called Charles Mpanga of Love Reached Church in Mengo on the 30th day of April 2022; he was in very bad health condition and was taken to a nearby Health Centre for treatment before being taken to Police; a case of an abandoned child was opened at Nsangi Police

station under reference number 37/30/4/2022; and was handed over to Chrystal Children's Centre by the probation officer as a fostering agency;

7. After being introduced to Kevin Musoke the Petitioners made their applications for fostering and were required to carry out more investigations into the whereabouts of the child's parents; On the 22nd August 2022 an advertisement was ran in the Monitor Newspaper inquiring about the whereabouts of the parents but it did not yield any positive results; the police carried out investigations in the month of December 2022 and the findings were that the alleged mother, Nakakeeto Margaret could not be found, she had shifted to an unknown place;
8. On 21st of February 2023 another advertisement was run in the Monitor Newspaper, but it still did not yield any results; on the 23rd day of February 2023 an announcement was placed on CBS radio station inquiring about the whereabouts of the alleged mother, Nakakeeto Margaret, and the father but it also yielded no results; on the 11th day of March, 2023, another advertisement was run in the Monitor Newspaper also in vain; the Police commenced investigations on the whereabouts of the parents the second time in May 2023 but still yielded no positive results; meanwhile the Probation and Social Welfare Officer assisted the Petitioners to appear before the Alternative Care Panel on 30th August 2022 which recommended that the petitioners start fostering the Children;
9. The Probation Officer of Wakiso district then offered an undertaking of both children on the 1st and 2nd day of September 2022 respectively; Chrystal Children's Centre and Tereza Children's Home relinquished their rights over the children to the Petitioners on the 1st and 2nd day of September 2022 respectively; the Petitioners applied for a grant of foster care orders on 13th September 2022 and the same was granted on the 14th of September 2022; they then appeared before the Alternative Care Panel on the 2nd June 2023 and a recommendation was made that they proceed to the Family Court for the adoption order;
10. The Petitioners have been fostering the said infants for the last 11 months since the 1st September 2022 to the day of filing the petition and have provided them with a decent home in Wakiso district; the children have not been the subjects of an adoption order or of an application or petition for an adoption order before this; the Petitioners have not received or agreed to receive and no person has made or given or agreed to make or give to the Petitioners any payment or reward in consideration of the adoption of infants; the Petitioners are people of a good moral and social standing in society with strong Christian backgrounds and both have the economic and moral capacity, with a decent home in Greece as

assessed by the welfare officer in Greece; the Petitioners' country of origin shall recognize the adoption orders from Uganda;

11. The Petitioners have fostered the children under the supervision of Ms. Mukalazi Joanita Nalwoga a Senior Probation and Social Welfare Officer attached to Wakiso District Local Government who has recommended this Petition.
12. The petition is also supported by affidavits deposed by: Mukalazi Joanita Nalwoga the Probation and Social Welfare Officer of Wakiso; Ariho Don of Chrystal Children's Centre and Namugenyi Patricia of Tereza Children's home.
13. The Petition is further supported by the Petitioners' passports No. AT3525836 and Passport No. PAB802587 respectively, birth certificates, an introduction letter from the LC1 Chairman of Kawotto Cell B Kitende ward Kajjansi Town Council, the Petitioners' bank statements, certificate of commencement of business, proof of ownership of property and income tax returns, an application letter for fostering to the Probation and Social Welfare Officer, a Police Report vide SD ref:74/15/11/202, New vision Newspaper dated 12th February, 2022, Bukedde Newspaper dated 22nd August, 2022, New Vision Newspaper advertisement dated 24th March, 2023, a Police report dated 24th August 2022, a second Police report dated 14th April 2023, a police report, a Newspaper advert in Monitor dated 22nd August, 2022, a Police report dated 14th December, 2022, a Monitor Newspaper dated 21st February, 2023, an advertisement placed at CBS Radio Station dated 23rd February, 2023, Monitor Newspaper advertisement dated 11th March, 2023, the second Police report dated 16th May, 2023, Minutes of the meeting of the Alternative Care Panel, the undertakings, a relinquishment letter, the foster care orders, a progress welfare reports from the Probation Officer of Wakiso district, the Certificate of approval of suitability of prospective adoptive parents from the Petitioner's Country of origin, Certificates of good conduct from Interpol Uganda, a welfare report/home study from Greece, confirmation letter from consulate of the Republic of Uganda in Greece;

Representation.

14. The Petitioners were represented by Counsel Alowo Patricia Majwere who filed written submissions framing the following issues:

1. Whether the petitioners are suitable to be appointed as the adoptive parents of the children

2. Whether the adoption is in the best interests of the children.

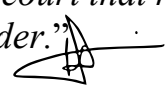
I have considered the prayers sought and deemed it necessary to add the issue as to ***whether the children's names should be changed***

Background.

15. Joyce was found abandoned by an unknown person at Mutundwe and handed over to Tereza Children Home; efforts to find her parents have proved futile; none of the members of the community where she was abandoned came up with information about her parents/relatives.
16. Kevin Musoke was found abandoned in a pit in Kitemu-Kivu in Kyengera town council and taken to police which later handed him over to Christal Children home; the reports show that the mother was allegedly found by the community and brought to police but since she was in a bad condition she was released on police bond and never returned because apparently she shifted from the area; efforts to trace her have proved futile and nobody has claimed the child;
17. The petitioners were introduced to the children separately by the probation officer and finally started fostering them; they wish to adopt and have been recommended by the National Alternative Care Panel.

Determination by court.

Issue 1. *Whether the petitioners are suitable to be appointed as the adoptive parents of the children.*

18. **Section 45(1)** of the **Children Act Cap. 59**; 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 joint applicants has attained the age of twenty-five years and is at least twenty- one years older than the child; while **section 45(3)** provides that an adoption order shall not be made in favour of a sole male applicant in respect of a female child, or in favour of a sole female applicant in respect of a male child, unless the court is satisfied that there are special circumstances that justify, as an exceptional measure, the making of an adoption order;
19. **Section 46(1)** of the same act stipulates that; *“A person who is not a citizen of Uganda may in exceptional circumstances adopt a Ugandan child, if he or she; (a) has stayed in Uganda for at least one year (b) has fostered the child for at least one year under the supervision of a probation and social welfare officer. (c) does not have a criminal record; (d) has a recommendation concerning his or her suitability to adopt a child from his or her country’s probation and welfare office or other competent authority; and (e) has satisfied the court that his or her country of origin will respect and recognise the adoption order.”*

20. Section 47(1) of the Children Act; provides that the consent of the parents of the child, if known, is necessary for the adoption order to be made.

I shall consider whether each of the requirements has been complied with by the petitioner;

The age requirement.

21. The petitioners' Passports No. AT3525836 and Passport No. PAB802587 respectively, show that the 1st petitioner was born on 7/6/1983 while the 2nd petitioner was born on 1/10/1984 therefore they are 40 years and 38 years of age respectively; according to the record the child Joyce was found abandoned when she was 9 months old on 15/11/2021; by the time of this ruling she is estimated to be 2 years and 7 months; while the child Kevin Musoke stated to have been about 1 day old when he was found abandoned on 30/04/2022; is about 1 year and 5 months;

The age requirement for both petitioners in respect of each of the 2 children has been complied with.

Stay in Uganda.

22. I have looked at the entry and exit stamps on the petitioners' passports; Konstantinos Frantzeskakis entered Uganda on the 3rd August 2022 and left on 23rd February 2023 and returned on 27/2/2023; he left on 22/7/23 and returned on 26/7/2023; Alodia Pageo Cabrera came on the 20/7/2022 and left on 17/2/2023; returned on 21/2/2023, left on 31/7/2023 and returned on 2/8/2023.

By this ruling the petitioners have fulfilled the 12 months stay requirement.

12 months foster period:

Musoke Kevin.

23. The foster care order shows that Musoke Kevin was placed in the foster care of the petitioners on 14/9/2022; although the probation officer had issued foster care placement forms on 1/9/2022; the 12 months foster period has been fulfilled.

Joyce

The foster care order shows that Joyce was placed in the foster care of the petitioners on 14/9/2022, although the probation officer had issued foster care placement forms on 1/9/2022; the 12 months foster period has been fulfilled.

Proof of no criminal record:

24. The petitioners presented Police Clearance Certificates issued by the Uganda Police Force dated 5/4/2023; and 5/5/2023 respectively and Certificates of Good conduct issued by the Directorate of Interpol and International Relations; dated 11/4/2023 and 10/5/2023 respectively
The requirement has been complied with.

Recommendation of the petitioner's country's probation and social welfare officer and confirmation that they shall recognize the order of this court.

25. The petitioners relied on a Home study on suitability of prospective adoptive parents from their country of origin signed by a Social worker; it is dated 1st June 2022. There is a confirmation letter from the consulate of the Republic of Uganda in Greece stating the adoption order shall be recognized by Greece.
The requirement has been complied with.

Financial capacity

26. Section 5 of the Children Act on the duty to maintain a child provides that it shall be the duty of a parent, guardian or any person having custody of a child to maintain that child and that duty gives a child the right to education and guidance, immunization, adequate diet, clothing, shelter, and medical attention. To provide education, clothing, food, medical attention and shelter all in the interests of the children pursuant to article 34 of the Constitution and section 3 of the Children Act, proof of financial capability is required;(see also Rule 10 (2) of the Adoption of Children Rules, 1997); bank statements and income tax returns have been adduced; the petitioners have the financial capacity to care for the children.

Consent of both parents.

Joyce.

27. ASP Nantume Agness from Child and Family Protection Unit attached to Nateete Police Station testified that_Joyce was abandoned in Mutundwe and rescued by Mr. Ole who later brought her to the police with the defence Secretary and their statements were recorded and later the Probation officer was contacted and the Child was placed in Tereza Babies Home;
28. Tereza Children's home put out an advertisement on 12th February 2022 in the Newspapers searching for the parents or relatives of Joyce (a copy of the newspaper was adduced in evidence); another Newspaper advert was put out still on the 22nd August 2022 in Bukedde Newspaper seeking the whereabouts of Joyce's parents (the newspaper was admitted in evidence);further police investigations were made and a police report shows they proved futile; another



advertisement was placed in the Newspaper on 24th March 2023 and a police report dated April, 2023 shows that no body came to claim the child;

Kevin

29. Kevin on the other hand was abandoned in a Pit in Kitemu Kivu in Kyengera Town Council and handed over to Crystal Children's home by Nsangi Police; advertisement was placed on 22nd August 2022 in the Monitor Newspaper seeking the whereabouts of Kevin Musoke's parents and further investigations were done in December 2022 to no avail.
30. No. 66835 ACP Masika Annet attached to child and family protection unit of the Uganda Police testified that she registered the child abandonment case and referred the child to the Probation Officer; that later 2 ladies came with the alleged mother of the baby who admitted having dumped the baby; because of her condition she was given police bond but she has never returned; a visit by police to the community but they were informed that the lady had shifted and since then no one has claimed the child; she filed a report dated 16/5/2023 ; the report was admitted in evidence;
31. Section 47(2) of the Children Act provides that the court may dispense with the consent if the parents are incapable of giving it; while section 47(5) of the act provides that if in the view of court a child is able to understand the adoption proceedings then his or her views shall be taken into consideration; subsection 7 provides that where it appears to court that any other person not a parent has rights and obligations in respect of the child such person's consent may be required; the facts of this case show that both children were abandoned and placed into children's homes; for Kevin evidence was led to show that a radio advertisement was placed on CBS Radio station inquiring about the whereabouts of Nakakeeto Margaret who was presumed to be the mother of the child but it yielded no results.
32. Lack of responsiveness to the call for parents or relatives to show up and claim the children has been proved. Both Ariho Don - from Christel children center where Kevin was held and Namugenyi Patricia from Tereza children's home where Joyce was held recommended the petition;
The consent that could be obtained in the circumstances has been proved.

Recommendation from the Alternative Care Panel

33. The High Court Administrative Circular No. 2 of 2020; Circular Instruction No.2(5); requires court to take into consideration the report of the Alternative Care Panel before granting any adoption order where the petitioner is a non

Ugandan; The Alternative Care Panel minutes of meeting held on 1st and 2nd June 2023 shows that the petitioners appeared before the panel; and were recommended; the Reports of the Probation Officer are also in favour of the petitioners

In the result, the petitioners have been found suitable to be considered as the adoptive parents of the children. Issue no.1 is answered in affirmative.

Issue 2. *Whether the adoption is in the best interests of the children.*

34. It is now a settled principle of the law that when considering issues to deal with children, their welfare must inform the decision; (see **Article 34 of the Constitution of the Republic of Uganda, Section 3(1) of the Children Act and the First schedule to the Children Act, Article 3(1) of the United Nations Convention on the Rights of the child** (which Uganda ratified in 1990); **Article 4(1) of the African Charter on the Rights and the Welfare of the Child** (which Uganda ratified in 1992). The above principle has been fortified by courts (see the case of **Mark Siduda Trevor (an infant) Family Cause No. 213 of 2014, the case of Deborah Joyce Alitubeera Civil Appeal No. 70 of 2011 and In Re M an Infant) SCCA No. 22/2004** ; and a host of others.

35. None Ugandan citizens can be considered to adopt Ugandan children as a last option only available to orphaned, abandoned or legally relinquished children along a continuum of comprehensive child welfare services(section 46(6) and (7) of the Children Act); both children were abandoned and in spite of calls for any interested persons to claim them, both family and none family, no Ugandan showed up; by this time they had been placed in children homes; even after the petitioners had started the foster care no body responded to the calls; the available continuum of comprehensive child welfare services- a broad range of preventive services and community based family centred alternative care options envisaged under section 46(7) of the Children Act, do not appear to be available to Joyce and Kevin;

36. In **Michael(an infant) and In The Matter of an Application for Guardianship by Morse Richard PetersonJr and Pricket Teresa Renee HC-00 –FD-FC-0072/2009** court while addressing a similar situation, stated “ ... *the child’s current circumstances as a resident of an orphanage are only intended to be temporary, pending the availability of a suitable home in which the child can be raised...No governmental support, be it local or central, is available for the care and upkeep of the child generally or specifically in the case of this child. Right now it is under the care of a local non-governmental organization.... There is no offer from Ugandans or non- Ugandans resident in Uganda to take up the responsibility of looking after the child. I find therefore ,exceptional*

circumstances exist for an order to be made in favour of non-citizens who are the only viable alternative.”

37. The case above discussed the hope for a child where no one had offered to take her in, and the only option was an orphanage which is supposed to be temporary viz avis a foreigner who is willing and able to provide a home for a child. In the case at hand even for Kevin whose mother allegedly admitted to having given birth to him and then disappeared; for Joyce nobody admitted to having given birth to her and abandoned her when she was already 9 months;
38. The Petitioners deponed that they met the Probation and Social Welfare Officer Mukalazi and were introduced to the two children from Crystal Children’s home and Tereza children’s home; they were assisted to appear before the Alternative Care Panel on 30th August 2022 which recommended them to foster the children and for the children homes to relinquish the rights to the children to them(the petitioners), which the former did;
39. They have fostered the children, by the time of this ruling, for at least 12 months; they have built a loving relationship with the children; they presented photographs of them with the children. The boy child was coughing and appeared unwell but the 1st petitioner kept comforting him and cleaning his nose; court watched Joyce with 2nd petitioner-the child spoke to her in their language and did not want to leave her side even when she was called to testify, the child insisted to be carried; they appeared close.
40. Progress welfare reports prepared by Ms Mukalazi Joanita the Probation Officer of Wakiso district show that the children have been well taken care of. Counsel submitted that the Petitioners are of a good moral and social standing in society with a strong Christian Background; and have a decent Home in Greece that the children can go back to. This is confirmed by the home study report.
41. The 2nd petitioner told court and I quote: ***‘I would just like to express my gratitude for the opportunity of fostering these two children for a year and for the option to adopt them hopefully. It has been challenging at the beginning being far away from home, from our family and friends it was very difficult at the beginning because we had a role of parents for the first time and Kevin was quite weak he has some breathing problem so we were taking him to the hospital but he is much better now. Unfortunately, we don’t have health care or insurance in Uganda so we would like to if we have the honour to adopt him we would like to take him to Greece and proceed with the treatments to find a permanent solution. Because we found out that when he was found he had***

Pneumonia so that is still something that is with him. He is much better not like when he was very little. But he still has cough, sometimes at night he cannot rest properly not all the time but when he gets a little bit of cold that is the situation; But despite that, the experience has been wonderful. It has been amazing to see how we have become a family, how they have become brother and sister and how they consider us as their parents. So if there is one thing I can ask today is to please grant us the adoption of these two children because I cannot imagine my life without them....'

42. Ariho Don the warden at Chrystal Children's Center and who according to his affidavit, was directly assigned to be responsible for Kevin Musoke told court that apart from failure to find the biological parents which is unfortunate he has been both humbled and impressed by the petitioners' tireless and deep concern towards not only Kevin's health but the love to give him a permanent home despite his condition; that he was honored to see them parent, not only as per their way but also by the guidelines of what Uganda expects not only culturally but as per the standards of the Alternative Care Panel.
43. Ms Nalwoga the Probation officer made comprehensive reports to this court, and she recommends the petition. Fostering gives a prospective adoptive parent opportunity to finally determine if they want to adopt. In a case where a child is unhealthy, and one still commits to want to adopt shows that the best interests of the child are what is driving the petitioner of course on top of her/his wish to become a parent.
44. Having considered the circumstances surrounding this petition; the fact that if this petition is not granted, the other available option is for the children to go back to the respective children's homes yet court was told they already consider each other as brother and sister, and from what court observed in court they consider the petitioners as their parents; I find that this petition is in the best interests of the children. Issue 2 therefore is answered in the affirmative.

Issue 3. *Whether the children's names should be changed.*

45. **Section 51 of the Children Act** vests the parental rights on the adoptive parents as far as custody, maintenance and education as would vest in them if the child had been their natural child. **Section 4(1)** provides that a child is entitled to live with his parents or guardians (I believe adoptive parents included). The dictionary definition of the word 'name' is 'a word or set of words by which a person or thing is known, addressed, or referred to'. A person is given a name by the parents at birth and that is what he or she is referred to. A family is defined

as ‘a group of two parents and their children living together as a unit; or all the descendants of a common ancestor’.

46. The Supreme Court of New South Wales in **Adoption of AT [2016] NSWSC 1971** held that; *“So far as the change of name is concerned, the surname that a child bear is an important identifier of membership of a family. It is an exceptional case, when an adoption order is made, that the child's surname would not be brought into accord with the family name of the adoptive parents, principally because one of the purposes of adoption is to place the child in the status and position of a full member of that family and adopting that family's surname is a significant aspect of doing so.”* .
47. The children are said to have adopted the petitioners’ language and they already consider themselves part of one family; the 2nd petitioner told court that they want to give the children the family name to make it safe for the children when they move to Greece to have a Greek name and also that both their first names have sentimental value.
48. The petitioners pray that Joyce be named Loanna Frantzeskakis and Kevin Musoke named Alexandros Frantzeskakis; I agree with the petitioners that since the children shall be living in a country where they look different the name change will create a stronger bond with the petitioners and enable the children to effectively fit in the family.

Issue no. 3 is answered in affirmative.

In the premises, the petitioners are found suitable to adopt; the petition is in the best interests of the children; a change of names to give the children a sense of belonging is also in their best interests.

The petition has merit and is granted with the following orders;

- i. **Konstantinos Frantzeskakis and Alodia Pageo Cabrera** are hereby appointed the adoptive parents of **Joyce and Kevin Musoke**.
- ii. The children **Joyce and Kevin Musoke** are hereby declared the adopted children of **Konstantinos Frantzeskakis and Alodia Pageo Cabrera** and the relationship of parent and child is hereby established with all rights and privileges incident thereto including the rights of inheritance for each of the children.

- iii. The parental rights of all others with respect to **Joyce and Kevin Musoke** not previously terminated are hereby terminated.
- iv. The Registrar General of births and deaths is directed to make entries recording the particulars of this adoption in the adopted children's register and to issue a certificate to **Konstantinos Frantzeskakis and Alodia Pageo Cabrera** reflecting the parental relationship established herein in respect of each child.
- v. **Konstantinos Frantzeskakis and Alodia Pageo Cabrera** shall have exclusive care, custody and control of the said **Joyce and in respect of Kevin Musoke** free from claims or hindrances of all others and shall be responsible for each child's education, maintenance, protection and support.
- vi. **Konstantinos Frantzeskakis and Alodia Pageo Cabrera** are allowed to give the children names of their choice.
- vii. The petitioners are allowed to travel to and/or reside in any country of their choice with the children.
- viii. The adoption order shall be furnished to the consular department of the ministry of foreign affairs.
- ix. Costs of the petition shall be borne by the petitioners.



Ketrah Kitariisibwa Katunguka-Judge.

19/09/2023.

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