

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(FAMILY DIVISION)**  
**ADOPTION CAUSE NO 032 OF 2023**  
**IN THE MATTER OF THE CONSTITUTION OF THE REPUBLIC**  
**OF UGANDA 1995 (AS AMENDED)**  
**AND**  
**IN THE MATTER OF THE CHILDREN ACT, CAP 59 (AS**  
**AMENDED)**  
**AND**  
**IN THE MATTER OF OKWI ANDREW JACKSON (CHILD)**  
**AND**  
**IN THE MATTER OF A PETITION FOR ADOPTION BY DOUGLAS**  
**CHARLA ATKINS AND DOUGLAS JUSTIN MICHAEL**  
**(PETITIONERS)**

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

**RULING**

**1.0 Introduction.**

1. This ruling relates to a Petition that was filed in this Court by Douglas Charla Atkins and Douglas Justin Michael (the Petitioners) for the adoption of Okwi Andrew Jackson (the child). The orders sought are that;



1. The requirement for the petitioners to obtain a Home Assessment from their country's probation and welfare office, be waived.
2. The requirement for the petitioners to obtain the consent of the biological parents of the child and/or relatives, be waived.
3. That the parental rights of the child's unknown parents be terminated.
4. An order for the adoption of the child, Okwi Andrew Jackson, by the Petitioners be made under the Children Act with all necessary directions.
5. The Petitioner to be allowed to change the child's name from Okwi Andrew Jackson to DOUGLAS MICHAEL OKWII.
6. The Petitioners to be allowed to process a Ugandan Passport for the child.
7. The Petitioners to be allowed to travel to and/or reside in the United States of America or in any other country of their choosing with the child.
8. The costs of this Petition be provided for as above-mentioned or otherwise as the Court may direct, and
9. Such further or other order be made as the nature of the case may require.
2. The petition is supported by the affidavits of the 1<sup>st</sup> Petitioner, 2<sup>nd</sup> Petitioner, Nakanjako Specioza, Allan Gulume Ndhola and Leah Amiti.
3. The Petitioners were represented by Counsel Kizito Ssekitoleko of M/S KBW Advocates, Kampala.

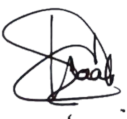


## **2.0 Issues for determination before this Court.**

- 1. Whether this court is seized with the jurisdiction to entertain the matter?**
- 2. Whether the Petitioners' qualify to be appointed the Adoptive Parents of the Child?**
- 3. Whether the Petition is in the best interests of the child?**

## **3.0 Background of the Child.**

- 3.1 The Child, Okwi Andrew Jackson is a male, Ugandan citizen aged 2 years and 8 months. He was abandoned at a residential gate of a missionary on Kira Road Opposite Jinja Regional Referral hospital. The child was left asleep at the premises and his family remains unknown. The matter was reported to the police post at the Jinja Main Referral Hospital on 6<sup>th</sup> October, 2021 at 1400 hours. A Police Officer named SGT Majanga Jacob entered a case vide SD; 05/06/10/2021. Upon the notification of the Probation and Social Welfare Officer, the child was placed at Amani Baby Cottages for care and protection as the efforts to find his parents went on. He has never been adopted. It is suspected that he was born on 16<sup>th</sup> December, 2020.
- 3.2 Efforts were made to find the child's relatives and parents however they have yielded no results. Inquiries were made with the child's picture. Newspaper advertisements in the New Vision and Bukedde Newspapers were placed on 22<sup>nd</sup> October, 2021. No one has come up to claim the child since the advertisements. Radio Advertisements



were made at three radio stations Basoga Bains FM 87.7, Obusoga Bulaile, Baba FM and in the radio NBS Kodheyo 89.4 Fm. The child's family was not found despite all efforts.

#### 4.0 **Background of the Petitioners.**

- 4.1 The Petitioners are citizens of the United States of America who first arrived in Uganda on 16<sup>th</sup> March, 2018 until 24<sup>th</sup> March, 2018 for a short visit and then returned on the 2<sup>nd</sup> March, 2019 and have stayed in Uganda since with a few visits back to the USA and other countries within East Africa. The Petitioners have been married for 12 years and together they have three issues, two biological sons (7 and 5 years old) and a 9 year old daughter. The Petitioners have stayed at Plot 15 Wynand Road, Lufullandizi Muwebwa Village, Northern Division Sub-County, Kamuli Division, Kamuli District.
- 4.2 The Petitioner, Douglas Charla Atkins is a thirty six (36) year old a Teacher and the Co-Petitioner, Douglas Justin Michael is a thirty seven year old (37) a Pastor. The Petitioners currently run a Foreign Non-Governmental Organization, Breaking Ground Missions Uganda in Bukolobe Village, Kaswaigo Ward, Northern Division, Kamuli Municipality, Kamuli District and are employed by this organization as Chief Operations Officer and Chief Executive officer respectively.

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

- 5.1 After the child was placed at Amani Baby Cottage and upon failure to trace his relatives, Armani Baby Cottages reached out to Probation



and Social Welfare Officer Ndhala Allan Gulume to find a foster or forever family. The Petitioners had been thinking of adoption of children and had been considering adoption of a child as a means to expand their family. The Petitioners sought to provide a child with a sense of belonging and a home.

5.2 The Petitioners contacted the offices of the Department of Gender, Labor and Community Development at Jinja City on 30<sup>th</sup> May, 2022 to inquire about adoption. The Petitioners were interviewed, their information was collected and they underwent education on the international adoption process.

5.3 The child was approved for fostering for adoption on 4<sup>th</sup> July, 2022 by the Senior Probation and Social Welfare Officer, Jinja District. The Ministry of Gender, Labor and Social Development's National Alternative Care Panel approved the child's adoption on 30<sup>th</sup> June, 2022 and the child has been in the actual custody of the Petitioners since 4<sup>th</sup> July, 2022.

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

1. The Petitioners are citizens of the United States of America (USA) who have lived in Uganda since 2<sup>nd</sup> March, 2019. They attached copies of their Birth Certificates, Passports, Visas/Work Permits, Immigration Entry and Exit Stamps, Tenancy Agreements starting 16<sup>th</sup> September, 2021 and Recommendation letters attached to the petition and marked "**PEX 1 to PEX 8**".



2. The Petitioners were married on the 31<sup>st</sup> October, 2010 and have 3 children. The marriage Certificate, birth certificates and respective visas are attached and marked **“PEX 9 to PEX 13”**.
3. The petitioners currently run a Foreign Non-Governmental Organization, Breaking Ground Missions Uganda in Bukolobe Village, Kaswaigo Ward, Northern Division, Kamuli Municipality, Kamuli District and are employed as the Chief Operations Officer and Chief Executive Officer respectively. They attached copies of the Certificate of Registration and Permit to operate an Organization from the Executive Director, National Bureau for Non- Governmental Organizations (NGO Bureau), Volunteer Employment contracts, and Proof of Employment and Income marked exhibits **“PEX 14 to PEX 17”**.
4. The Petitioners do not have a Criminal record in the United States of America and affirm that they do not have any criminal record in Uganda or any other country. They attached copies of their Criminal Record clearances from USA conducted at Florida and North Carolina by Direct Screening, a USA licensed Agency and Certificates of Good conduct from Interpol marked exhibits **“PEX 18 to PEX 21”**.
5. The Petitioners and the child were presented before the Alternative Care Panel on 30<sup>th</sup> June, 2022 and 2<sup>nd</sup> June, 2023 where they received approval to file this adoption petition. The minutes of the meetings from the Alternative Care Panel are attached and marked **“PEX 22”**



6. The petitioners also attached copies of the recommendation from the District Town Clerk Jinja dated 22<sup>nd</sup> June, 2022, and the Adoptive Home Study Report by Mr. Ndhala Allan Gulume marked **“PEX 23 and PEX 24”**.
7. The Petitioners attached copies of recommendations from their friends and relatives concerning their suitability to adopt the child. The Recommendations are attached and marked **“PEX 25 to PEX 33”**.
8. The Petitioners live in Uganda and affirm that they are not required to obtain a Home Study Report from the United States Probation Office or licensed adoption agency. Copies of the Article in proof of this from the U.S National Council for Adoption authored by Dr. Kelly Dempsey dated 29<sup>th</sup> March, 2022 and Form N-600K are attached and marked **“PEX 34 and PEX 35”**.
9. The child’s medical documents are also attached and marked **“PEX 36”**.
10. Copies of the petitioner’s medical reports and those of their biological children are attached and marked **“PEX 37”** Collectively.
11. The petitioners also attached copies of the child’s history and biodata, a letter from his Medical Social Worker Mwisaka Milton at Jinja Referral Hospital, radio announcements and newspaper advertisements made in search of his family at Basoga Baine FM 87.7 FM, NBS Kodheyo 89.4 FM, Baba FM, New Vision and Bukedde Newspapers and the Police Investigation Report from the Child Protection Unit, Jinja Central Police Station, Jinja marked **“PEX 37 to PEX 46”**



12. The copies of the child's transfer care from Armani Baby Cottage to the Petitioners dated 4<sup>th</sup> July, 2022 signed by Ms. Suzan Acen and Ms. Agatha Orena, The form of Undertaking, Foster Care Order dated 25<sup>th</sup> August, 2022 and the Application for the care order marked **"PEX 47,48 49"**.

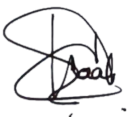
## 5.0 **Written Submissions.**

5.1 Learned Counsel, Ms. Kizito Ssekitoleko, 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.

## 6.0 **RESOLUTION OF ISSUES.**

6.1 **Issue 1. Whether this Honorable Court has Jurisdiction to entertain this matter?**

6.1.1 The Jurisdiction of this petition is provided for under Section **44(1) (b) of the Children's Act, Cap 59** and **Rule 17 of the Children (Adoption of children) rules. Section 44 (1) of the Children Act, Cap. 59** provides for Court's jurisdiction in handling matters of adoptions. It provides that in cases where either the child or the applicant is not a citizen of Uganda, the application shall be made to the High Court of Uganda.






6.1.2 In the instant application, the child Okwi Andrew Jackson is a Ugandan and the petitioners are American Citizens. This is an inter country adoption and this Court has jurisdiction to entertain this petition. Accordingly, this issue is resolved in the affirmative.

**6.2 Issue 2. Whether the Petitioners are suitable to be declared the adoptive parents of the child?**

6.2.1 Adoption is 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.

6.2.2 It is important to note that 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, Adoption Cause No. 052 of 2002.**

6.2.3 **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.

6.2.4 The Petitioners are 36 and 37 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's Act.

6.2.5 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 9**". The petitioners were married on the 31<sup>st</sup> July, 2023 in the state of Florida, USA.

6.2.6 **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 first arrived in Uganda on the 16<sup>th</sup> March, 2018 until 24<sup>th</sup> March, 2018 for a short visit and then returned on the 2<sup>nd</sup> March, 2019 and have stayed in Uganda since. They attached copies of their Passports, Visas/Work Permits, Immigration Entry and Exit Stamps, Tenancy Agreements starting 16<sup>th</sup> September, 2021 and a Recommendation letter from the LC1 Lufula Ndiizi Zone, Muwebwa Ward, Northern Division, Kamuli Municipal Council, Kamuli District attached to the petition and marked "**PEX 3 to PEX 8**". They have therefore lived in Uganda for over the required period of one year.

6.2.7 **Section 46 (1) (b) of the Children Act Cap 59 as amended** requires that the Petitioners foster the child for a period of one year



under the supervision of a Probation and Social Welfare Officer. The child was approved for fostering for adoption on 4th July, 2022 by the Senior Probation and Social Welfare Officer, Jinja District. The Ministry of Gender, Labor and Social Development's National Alternative Care Panel approved the child's adoption on 30th June, 2022 and the child has been in the actual custody of the Petitioners since 4th July, 2022. The copies of the child's transfer care from Armani Baby Cottage to the petitioners dated 4th July, 2022 signed by Ms. Suzan Acen and Ms. Agatha Orena, The form of Undertaking, Foster Care Order dated 25th August, 2022 and the Application for the care order are marked **"PEX 47,48 49"** on the petition.

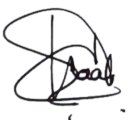
6.2.8 Furthermore, the Petitioners and the child were presented before the Alternative Care Panel on 30th June, 2022 and 2nd June, 2023 where they received approval to file this adoption petition. The minutes of the meetings from the Alternative Care Panel are attached and marked **"PEX 22"**. I find that the Petitioners have fulfilled the requirement of fostering the child for a period of one year.

6.2.9 **Section 46 (c) of the Children Act, Cap 59 as amended** provides that the Petitioners must have no criminal record. The Petitioners attached copies of their Criminal Record clearances from USA conducted at Florida and North Carolina by Direct Screening, a USA licensed Agency and Certificates of Good conduct from Interpol marked exhibits **"PEX 18 to PEX 21"**. This court finds that the Petitioners have fulfilled this requirement of intercountry adoption as according to the law.



6.2.10 **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 prayed that this requirement be waived on the grounds that they currently live in Uganda and are therefore not required to obtain a Home Study Report from the United States probation office or licensed adoption agency. **They relied on Section 46(4) of the Children Act as amended** that provides for waiver of the requirements for intercountry adoption under exceptional circumstances. They provided copies of the Article in proof of this from the U.S National Council for Adoption authored by Dr. Kelly Dempsey dated 29<sup>th</sup> March, 2022 and Form N-600K are attached and marked **"PEX 34 and PEX 35"**. The court therefore waives this requirement in consideration of the Petitioners' current residence and occupation in addition to the fact that they have lived in Uganda for over 2 years.

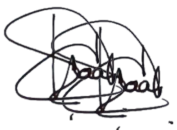
6.2.11 **Section 46 (2) of the Children's Act, (Supra)** is to the effect that the Probation and Social Welfare Officer referred to in subsection (1) (b) shall be required to submit a report to assist the Court in considering the application; and the Court may, in addition, require some other person or authority to make a report in respect of the application. The Petitioners provided this court with a copy of the recommendation and Home Study Report by the Senior Probation and Social Welfare Officer Jinja, Mr. Ndhala Allan Gulume marked **PEX 24**.



6.2.12 **Section 46 (e) of the Children's Act (Supra)** requires that the Petitioner to satisfy the court that his or her country of origin will respect and recognize the adoption order. The Petitioners, under paragraph 19 of the Petition affirm that the Government of the United States of America will respect and recognize the order of this Honorable Court and will issue immigrant visas for the child if the petition is granted.

6.2.13 **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 Okwi Andrew Jackson was abandoned and his family and relatives have failed to come forward despite the fact that efforts were made to find his family but yielded no results. Inquiries were made with the child's picture. Newspaper advertisements were placed in the New Vision and Bukedde Newspapers on 22<sup>nd</sup> October, 2021.

6.2.14 No one has come up to claim the child since the advertisements. Radio Advertisements were made at three radio stations Basoga Baino FM 87.7 Obusoga Bulaile, Baba FM and in the radio NBS Kodheyo 89.4 FM. The child's family was not found despite all efforts. Copies of the radio announcements and newspaper advertisements made in search of his family at Basoga Baino FM 87.7 FM, NBS Kodheyo 89.4 FM, Baba FM, New Vision and Bukedde Newspapers and the Police Investigation Report from the Child Protection Unit, Jinja Central Police Station, Jinja marked **"PEX 40 to PEX 46"** were presented to this court. No Ugandan family has



come up to adopt 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.**

6.2.15 According to **Section 47 (2) of the Children Act, Cap. 59**, the court may dispense with the consent if the parents of the Child are incapable of giving it. The parents and relatives are unknown and despite newspaper and radio adverts, the child's biological family has not been found.

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

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

6.3.1 It is trite law that when 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.

6.3.2 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.

6.3.3 **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.

6.3.4 **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."

6.3.5 **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.

6.3.6 The function of the judge in a case like this, is to act as the 'judicial reasonable parent'. **Twijuke Fred V Tugumisirize Annet Divorce Cause No.028 of 2021 No.028 OF 2021.**

6.3.7 In the case of the child before this court, Okwi Andrew Jackson was abandoned at a residential gate of a missionary on Kira Road Opposite Jinja Regional Referral hospital. The child was left asleep at the premises and his family remains unknown. The matter was reported to the police post at the Jinja Main Referral Hospital on



6th October, 2021 at 1400 hours. A Police Officer named SGT Majanga Jacob entered a case vide SD; 05/06/10/2021. Upon the notification of the Probation and Social Welfare officer, the child was placed at Amani Baby Cottages for care and protection as the efforts to find his parents went on. He has never been adopted and all efforts to find his family including Newspaper advertisements in the New vision and Bukedde Newspapers on 22nd October, 2021 and Radio Advertisements made at three radio stations, Basoga Baino FM 87.7 Obusoga Bulaile, Baba FM and in the radio NBS Kodheyo 89.4 FM yielded no efforts.

6.3.8 The child has been presented with a second chance at a family, a home, love and siblings to grow with and be taught by. The Petitioners had been thinking of adoption of child and had been considering adoption of a child as a means to expand their family. This speaks to the intentionality of the Petitioners in wanting this child and planning for this child. They seek to provide a child with a sense of belonging and a home.

6.3.9 The Petitioners demonstrated the financial capability to look after this child. They presented evidence to show that they currently run a Foreign Non-Governmental Organization, Breaking Ground Missions Uganda in Bukolobe Village, Kaswaigo Ward, Northern Division, Kamuli Municipality, Kamuli District and are employed as the Chief Operations Officer and Chief Executive Officer respectively. The Petitioners attached copies of the Certificate of Registration and Permit to operate an Organization from the Executive Director, National Bureau for Non- Governmental





Organizations (NGO Bureau) Uganda, Volunteer Employment contracts, and Proof of Employment and Income marked exhibits **“PEX 14 to PEX 17”**. The Petitioners are therefore able to look after the Child.

- 6.3.10 The Petitioners and their children 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 37”**. The child will therefore be raised in a safe and healthy environment.
- 6.3.11 The Petitioners have also shown this court that they have community and family that is necessary in raising a child. They will be supported and the child will know the love and care of that community. The petitioners attached numerous recommendations from their friends and relatives concerning their suitability to adopt the child marked **“PEX 25 to PEX 33”**.
- 6.3.12 The standard and requirements for adoption of children especially inter-country adoption are high and strict because they need to be. This court acts as the child’s parent and therefore protector to ensure that the child will be taken care of and loved, provided with the basic needs he requires to grow up healthy and strong to become a contributing member of our society and re-write his story. The court finds that the Petitioners have fulfilled the requirements as necessitated by the law. They are willing and able, they will provide him with a family and a home that will allow him to thrive. It’s in the child’s best interest to have parents and a family. I therefore



find the placement of the child in permanent custody of the Petitioners to be in his best interests.

6.3.13 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 interests of the child.

## 7.0 **Conclusion.**

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

- a) The Petitioners **DOUGLAS CHARLA ATKINS AND DOUGLAS JUSTIN MICHAEL** are hereby appointed the adoptive parents of the child **OKWI ANDREW JACKSON**.
- b) The Parental rights of all others in respect to the child **OKWI ANDREW JACKSON** not previously terminated, are hereby terminated.
- c) The Petitioners **DOUGLAS CHARLA ATKINS AND DOUGLAS JUSTIN MICHAEL** shall have exclusive care, custody and control of the child, **OKWI ANDREW JACKSON** 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.



10. The Petitioners are hereby allowed to change the names of the Child to “**DOUGLAS MICHAEL OKWII**”.
- e) That the Petitioners are hereby allowed to process a Ugandan Passport for the child.
- f) This Adoption Order shall be furnished to Consular Department in the Ministry of Foreign Affairs.
- g) Costs of this petition shall be met by the Petitioners.

**I so Order.**

***Dated, Signed and Delivered by email this 14<sup>th</sup> day of September, 2023.***



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**CELIA NAGAWA  
JUDGE**