

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
FAMILY DIVISION
ADOPTION CAUSE NO. 0026 OF 2022
IN THE MATTER OF THE CHILDREN ACT CAP 59 AS AMENDED BY THE
CHILDREN (AMENDMENT) ACT 9 OF 2016

AND

IN THE MATTER OF AUMA CONNY – (CHILD)

AND

IN THE MATTER OF A PETITION FOR ADOPTION BY VERENE DOROTHEE
MAREI KOERNER AND THOMAS BATKE.

Before: Justice Ketrach Kitariisibwa Katunguka.

Ruling.

Introduction;

1. Verene Dorothee Marei Koerner(herein called the 1st Petitioner) and Thomas Batke (herein called the 2nd petitioner);petition this court under section 46 of the Children’s Act Cap 59 as amended by the Children (Amendment Act) No. 9/2016; for orders that an order for adoption in the best interest of Auma Conny (herein called the child) by the Petitioners be granted; costs of this application be provided for and for such other or further order as the nature of the case may require or the court deems fit to be;
2. The Petition is supported by the affidavits deposed by the Petitioners and briefly that; they are a married couple both German Nationals; and are desirous of adopting Auma Conny a female Ugandan child aged 16 years; they are residents of Muyenga Bukasa in Kampala district; according to their passports the 1st Petitioner is 39 years old born on 14/07/1983, whilst the 2nd Petitioner is aged 42 years having been born on 23/01/1981;



the Petitioners have a son named Jakob Emil Benedikt Koerner aged 5 years; they have no criminal record;

3. The child Auma Conny is female aged 16 years having been born on 11/05/2005, she is unmarried and a biological daughter of Alum Vicky; the Petitioners first met the child in 2014 and have since 2017 fostered her;
4. The Petitioners have received consent from the biological mother of Auma Conny; they have not paid any form of monetary, gift or made any promise for future monetary gain to the mother of the child; the necessary consent has been given freely without duress, undue influence and misrepresentation; the Petitioners' country of origin shall respect this adoption order once granted; the mother is unable to care for the child Auma Conny;
5. The Petitioner has fostered the child first under the supervision of Ms. Tali Caroline a Probation and Social Welfare Officer attached to Oyam district who passed on and was replaced Mr. Obong Bonny Patrick the Senior Probation and Social Welfare Officer Oyam district who has recommended this Petition;
6. The Petition is also supported by a copy of the birth certificate of Auma Conny, a copy of the bio data of the 1st Petitioner, a copy of the marriage certificate, copies of the bank slips, copy of the foster care forms, copies of the school reports and school fees payments, medical report, a comprehensive medical report, a copy of the bank statement, a copy of the consent of Alum Vicky, a copy of the minutes of the clan meeting, a copy of certificates of good conduct from Interpol, a copy of a report submitted to the Alternative Care Panel, a copy of the Alternative Care Panel report, copy of certificate of legal qualifications to adopt issued by the Ministry of Justice and consent of the child to be adopted!



Representation:

7. The Petitioner was represented by Counsel Winfred Adukule.

Counsel filed written submissions on the following issues;

i. Whether the petitioners are suitable and qualify to be appointed as adoptive parents of Conny Auma.

ii. Whether it is in the best interests of the child for an order of adoption to be made.

Background.

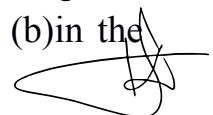
8. The child Auma Conny was born on 11/5/2005 to Alum Vicky and the late Olwa Bosco, at Minakulu Health centre in Oyam District; while working in Oyam and Lira District with GIZ in 2014 the 1st petitioner came into contact with the child when she was 9 years old and staying with her aunt Christine and her husband Martin who were both employed by the former's predecessors as guards; the petitioners learnt that upon the death of the child's biological father, her mother had given up the 4 year old girl to be raised by her late father's family as she (the biological mother) had remarried.

9. In 2017, the petitioners applied to foster the child and the foster care order was granted by the Probation Officer of Oyam district; the petitioners have since had custody of the child; enrolled her in the British School of Kampala Limited; travelled with her to Germany for Christmas holidays to meet the petitioners' families in December 2018; and on return to Uganda, they taken interest in adopting her the biological mother has consented.

Determination.

Issue 1. Whether the petitioners are suitable and qualify to be appointed as adoptive parents of Conny Auma.

10. Section 45(1) of the Children Act as amended stipulates that; an adoption order may be granted to a sole applicant or jointly to spouses where (a) 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; (b) in the



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

11. **Section 46(1)** provides 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.’* ; while **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.

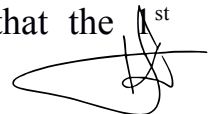
I shall consider each of the requirements to establish whether the petitioners have complied.

Age:

12. The child’s birth certificate shows that the child was born on 11th of May 2005; which make her 17 years and 11 months at the time of this ruling; Evidence as per a copy of the 1st petitioner (Verene **Dorothee Marei Koerner**)’s Germany passport No.CH1H7HW78 shows that she was born on 14/07/1983, therefore, she is 40 years of age and 23 years older than the child; while the 2nd petitioner (Thomas Batke) according to a copy of his Germany passport No.CFH42YC57 having been born on 23/01/1981 is 42 years and 25 years older than the child; both petitioners are at least 21 years older that the child. The age requirement has been fulfilled.

Stay in Uganda:

13. The 1st petitioner states at paragraphs 7 and 8 of her affidavit in support that she came to Uganda in September 2013 under the GIZ internship program with GIZ Water Programme in Kampala; subsequently she got employed with GIZ in 2014 under their Energy program and posted to Oyam and Lira districts; a copy of her Visa work permit vide EP0010860 is valid from 19/05/2017 until 19/05/2019 ; it was renewed vide EP0040329 valid from 04/07/2019 to 04/07/2022; a letter from GIZ dated 7/5/2021 signed by the Country Director shows that the 1st



petitioner has been employed with GIZ Uganda since 2/11/2014; the LC1 recommendation letter of Muyenga Hill V. Urban Council, Bukasa Ward dated 3/3/2022 shows that the applicant is a resident of Muyenga, together with the 2nd petitioner;

14. In his affidavit the 2nd petitioner deposed that he first came to Uganda in 2013 and subsequently joined his wife on 11/01/2016 and together they have lived in Uganda since 2016 to date; attached to his affidavit is a copy of his Visa EV00126250 marked with an entry stamp dated 04/10/2016 and exit on 2/4/2017; another Visa vide EV0700565 entry was made 02/07/2019 and exit on 12/10/2019; Vide Visa EV0799507 the 2nd petitioner made another entry into Uganda and there is no any further exit since then.

The petitioners have complied with the 12 months stay in Uganda.

Foster period:

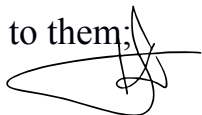
15. Both petitioners testify that they have fostered the child since 2017; this is corroborated by the foster care placement form of undertaking dated 9/2/2017 issued by the district Probation and Social Welfare Officer of Oyam district a one Tali Caroline and Gerald Abila; the petitioners have physical custody of the child since 2017; therefore, they have satisfied the fostering period of 12 months.

Proof of no criminal record:

16. The petitioners have attached certificates of good conduct from Uganda Police Force under the Directorate of Interpol and International Relations and police clearance certificates dated respectively, all to the effect that the petitioners have no criminal record;

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

17. The petitioners deposed that an adoption order made by this court will be respected and recognized by Germany their home country; a letter dated 10/01/2023 from the Germany headquarters of the adoption agency (Bavarian Centre for Family and Social affairs); shows that since the petitioners' habitual residence is outside Germany, the Germany adoption eligibility test for adoption could not apply to them;



18. The role of probation and social welfare officers is to confirm to court that the welfare of a child subject of an adoption petition or requiring alternative care is not in jeopardy or shall not be at risk when the order concerning such child(ren), is made by court; the facts of this case show that it is the Ugandan probation and social welfare officers who have been supervising the petitioners' fostering the child;
19. **Section 46(4) of the Children Act** as amended empowers this court to, in exceptional circumstances, waive any of the requirements specified in subsection (1); in this instance, the petitioners having stayed in Uganda since 2014 and 2016 respectively with occasional visits to their home country during Christmas holidays; I agree with the view that it is not possible for their home country's probation officer to effectively assess their suitability to adopt the child in question; a similar position was considered and stated by court in **RE; Hassan Kaaya(Family Cause No. 002 of 2018)**;
20. I have considered a Parochial recommendation letter from St. Ursula Catholic Church Foundation in Munich; recommending the petitioners as suitable adoptive parents based on the fact that whenever they have returned to Germany, they attend mass regularly, they have a comfortable residence within the church's parish just a few meters from the church.
21. Originally, the petitioners were assessed and recommended by the Probation and Social Welfare officer of Oyam district Uganda, Tali Caroline (now deceased); the current officer Obong Bonny Patrick informed court that basing on the report of his predecessor, he also visited the petitioners' home and recommends the petitioners to adopt the child; I find the suitability recommendation sufficient and waive the requirement for the report of the home country probation officer.

Consent of the parents if known.

22. The child's known biological mother (Alum Vicky) deposed an affidavit stating that the father of the child Olwa Bosco died when the child was only 2 years; that after remarrying, her new husband did not want her children from her previous relationship to stay in his home; so she sent the child to stay with her paternal aunt; she has not constantly stayed with the child since then and agrees

that it is in the child's best interests that she is adopted by the petitioners who have been meeting her education and other basic needs; she appeared in court and confirmed that no one has forced her, she understands what adoption means and consents that her child be adopted by the petitioners;

The parental consent has been confirmed.

Financial capability;

23. The welfare of the child requires that the financial status of the petitioners is known because for one to fulfil parental obligations they must afford to provide the child's needs including food, shelter, medical, education and other necessities of life(see section 5 of the Children Act); the 1st petitioner deposed that she is gainfully employed with GIZ under their Energy Program; a copy of her bank statement for the period 17/11/2021 to 23/02/2022 shows account balance of 7.432,53€; the 2nd petitioner is a stay home father;

I find that the 1st petitioner is gainfully employed and can financially meet the child's needs.

Health status:

24. According to the medical reports from the International Hospital Kampala dated 2/5/2021 both petitioners are in good nutritional status and normal mental capacity.

In the result, the petitioners qualify to be adoptive parents of the child. Issue 1 is answered in the affirmative.

Whether it is in the best interests of the child for an order of adoption to be made?

25. **Article 34(1) of the 1995 Constitution of Uganda** provides that laws made in regard to child must be made in the children's interest; **section 3(1) of the Children Act as amended** is to effect that the welfare of the child shall be of paramount consideration for this Honourable Court in making decisions as to who should adopt the child in issue; this echoes **article 3 of the UN Convention on the Rights of the Child** which provides that, in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration;



26. According to *Bromley's Family Law, 8th Edition, at Page 336*, "...the children's welfare is the court's sole concern, and other facts are relevant only to the extent that they can assist the court in ascertaining the best solution for the child...". The welfare principle was explained by the Court in *JVC (1970) AC 668* can be helpful; "*when all relevant facts, relationships, claims and wishes of parents, risks, choices and other circumstances are taken into account and weighed, the course to be followed will be that which is most in the interest of the child...*"

27. **Section 3(3) of the Children act as amended** provides that in determining matters of the child's welfare, Court shall consider the following; the ascertainable wishes of the child in due regard to his age and understanding; the child's physical, emotional and educational needs; the likely effects of any change in the child's circumstances; the child's sex, age, background and other relevant circumstances in the matter; any harm that the child has suffered or is at risk of suffering; where relevant, the capacity of the child's parents or guardian or other person involved in the care of the child and ability to meet the needs of the child;

28. **Section 4(1) (b) of the Children (Amendment) Act 2016** provides that where a child is capable of expressing his wishes, his belief or opinion on any decision concerning him shall be considered; all within the context of the best interests of the child with due regard to the child's wishes having regard to their age and understanding. *See for example Re Michael Lumu Adoption Cause No. 8/2000 followed in Adoption Cause No. 13/2017 in the Matter of Briona Nakayizza;*

29. The child in issue is said to have lost her father when she was 4 years; her mother who had 4 children with the child's deceased father decided to remarry and gave out the custody of the child to her paternal aunt when the child was four years; the said aunt was a home worker to the petitioners' predecessors at work; the report of the Probation and Social Welfare Officer shows that due to the vulnerability of the child and her aunt, the petitioners started to foster the child officially in 2017; there is proof of school fees payment by the petitioners since 2015, when she was in primary three in Oyam district; the child attends British School of Kampala Ltd; the petitioners also adduced a copy of medical reports from International Hospital of Kampala as proof of having met the child's medical



needs; In their affidavits the petitioners state that they are willing to continue providing for the child;

30. Section 47(5) of the Children 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; section 47(6) of the Children act provides that if the child is at least fourteen years of age, his or her consent to the adoption must be obtained unless it is impossible for him or her to express her wishes; the child subject of this petition is above 12 years of age; she stated that her birthday is 11th May 2012 and she is 17 years; she understands the implications of adoption and has stayed with the petitioners for 9 years now and is used to them, for they are like her parents. She informed court that she consents to the adoption;

31. I have taken into consideration the child's views because she impressed me as a person who knows what she wants; she is 17 years and 11 months therefore her consent carries weight; the alternative to this petition being granted does not appear to be in the best interests of the child because her biological mother's current husband does not want her to live with them; the child has already tasted good home environment, education and medical care; she looked happy with the petitioners; the petition was recommended by the National Alternative Care Panel;

I find that the petition is in the best interests of the child; issue 2 is answered in the affirmative;

In summary the petitioners are found suitable to adopt and this petition is in the best interests of the child; I therefore allow it and make the following orders;

- i. **Verene Dorothee Marei Koerner And Thomas Batke** are appointed the adoptive parents of **Auma Conny**.
- ii. The child **Auma Conny** is hereby declared the adopted child of **Verene Dorothee Marei Koerner And Thomas Batke** and the relationship of parent and child is hereby established with all rights and privileges incident thereto including the right of inheritance.
- iii. The parental rights of all others with respect to **Auma Conny** not previously terminated are hereby terminated.



- iv.** The Registrar General of births and deaths is hereby directed to make an entry recording the particulars of this adoption in the adopted children's register and to issue a certificate to **Verene Dorothee Marei Koerner And Thomas Batke** reflecting the parental relationship established;
- v.** **Verene Dorothee Marei Koerner And Thomas Batke** shall have exclusive care, custody and control of the said **Auma Conny** free from claims or hindrances of all others and shall be responsible for her education, maintenance, protection and support.
- vi.** The adoption order shall be furnished to the consular department of the ministry of foreign affairs of Uganda;
- vii.** Costs of the petition shall be borne by the petitioners.



Ketrah Kitariisibwa Katunguka

Judge

14/04/2023

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