

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA**  
**FAMILY DIVISION**  
**ADOPTION CAUSE NO. 0041 OF 2021**  
**IN THE MATTER OF CHILDREN'S ACT CAP 59] AS AMENDED**  
**AND**  
**IN THE MATTER OF DEVIN BEAU JOE OTIM AND BRECHJE**  
**AMALIA PHILIPPA OTIM – THE CHILDREN**  
**AND**  
**IN THE MATTER OF A PETITION FOR AN ADOPTION ORDER**  
**BY OTIM ZENON JOEL AND OTIM SUZAN DEN HERTOOG**

Before: Lady Justice Ketrach Kitariisibwa Katunguka

**Ruling**

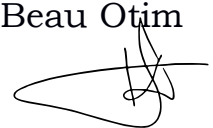
1. This is a Petition for adoption brought under Article 126 of the Constitution, Sections 44 (1) (b), 45,46 and 47 and of the Children Act, Rules 3 (1), 4 and 7 of the Children (Adoption of Children) Rules); by Otim Zenon Joel and Otim Suzan Den Hertog seeking for orders that an order for adoption of the children Devin Beau Joe Otim and Brechje Amalia Philippa Otim be made in their favour under the children Act as amended with all the necessary directions; the costs of this Petition be provided or otherwise as the court may direct; such further or other orders be made as the nature of the case may require



**2.** The Petitioners deposed an Affidavit briefly that; they are desirous of adopting the children Devin Beau Joe Otim and Brechje Amalia Philippa Otim (herein referred to as the Children); they are residents of Butema, Nyenga Road Zone, Buzika, Njeru Parish, Buikwe District, the 2<sup>nd</sup> Petitioner has been resident in Uganda since 2005; the 1<sup>st</sup> Petitioner is a Ugandan Citizen holder of National Identity Card NIN No. CM84043103W40C and Passport No. A00274934, the 2<sup>nd</sup> Petitioner is a citizen of the Kingdom of Netherlands and holder of a Netherlands Passport No. 161189465 and a Ugandan Certificate of residence NX54P1135;

**3.** The Petitioners got married on the 31<sup>st</sup> day of July 2010 at Calvary Chapel Jinja and are blessed with three biological children to wit Elias Cornelis Otim aged 8 years (born on 23/8/2013), Danley Leander Otim aged 6 years (born on 24<sup>th</sup>/9/2014), Rebecca Madelief Otim aged 2 months (born on 8<sup>th</sup>/12/2018); the Petitioners are currently employed as the Managers/Directors of Home Sweet – Uganda a Non – Government Organization caring for vulnerable physically handicapped Children;

**4.** The 1<sup>st</sup> Petitioner is 37 years old of age having been born on 12/4/1984 and is 28 years older than the child Devin Beau Joe Otim and 29 years older than the child Brechje Amalia Philippa Otim while the 2<sup>nd</sup> Petitioner Otim Suzan Den Hertog is 36 years of age having been born on the 12/9/1984 and is 27 years older than Devin Beau Otim



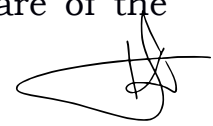
and 28 years older than the child Brechje Amalia Philippa Otim;

**5.** The child Devin Beau Joe Otim was found abandoned on the veranda of the toilet at Rubaga Cathedral on the 28<sup>th</sup> January 2011 and rushed for urgent medical care at Mulago hospital; the matter was later reported to Old Kampala Police Station vide SD 13/16/01/12 and the child was referred to Malaika Babies' Home;

**6.** The child Brechje Amalia Philippa Otim was rescued from a pit latrine in Gwafu Village, Namiyango Road, Mukono District on the 16<sup>th</sup> day January of 2012 and rushed for urgent medical care at Mulago Hospital and the matter was later reported to Mulago Police Station vide SD13/16/01/12; the child was referred to Malaika Babies' Home; the Petitioners met the children while they were under the care of Malaika Babies Home;

**7.** The Petitioners are not blood relations of the children; they do not have any criminal record both in Uganda and the Kingdom of Netherlands or any other country; the children Devin Beau Joe Otim and Brechje Amalia Philippa Otim are male and female respectively, aged 9 and 8 years respectively, unmarried, citizens of Uganda, born to unknown parents, now in actual custody of the Petitioners;

**8.** The children have not been the subject of an Adoption Order or Application or Petition for an Adoption Order; the child Devin Beau Joe Otim was placed in the care of the



Petitioners on the 12/04/2011 by the then Probation Officer Jinja Mr. Opio Ouma and the Petitioners have fostered the child under the supervision of the Probation and Social Welfare Officer Jinja since then;

**9.** The child Brechje Amalia Philippa Otim was placed in the care of the Petitioners on the 5<sup>th</sup> day of October 2012 by the Probation Officer Buikwe Ms. Naigaga Lydia and the Petitioners have since fostered the child under the supervision of the Probation and Social Welfare Officer of Buikwe; the Petitioners were granted a legal Guardianship Order over the Children Devin Beau Joe Otim and Bechje Amalia Philippa Otim on the 2<sup>nd</sup> day of May 2014 vide High Court of Uganda at Kampala Family Division Family Cause No. 263 of 2014;

**10.** The Petitioners have bonded with the children Devin Beau Joe Otim and Brechje Amalia Philippa Otim over the past seven years and consider them as part of their family; they have not received or agreed to receive and no person has made or given or agreed to make or give t them any payment or reward in consideration of the adoption of the children; they are financially stable and willing to continue looking after the children and meet their basic needs; confirm that an Adoption Order made by this Honorable Court will be respected and recognized in the Kingdom of Netherlands, the 2<sup>nd</sup> Petitioner's country of origin; the costs of this Petition shall be paid by the Petitioners;



**11.** The Petitioners have fostered the children under the supervision of Ms. Naigaga Lydia a Probation and Social Welfare Officer attached to Buikwe District who has recommended this Petition; The Petition is also supported by photostat copies of;

**12.** The Passport of Otim Zenon Joel No. B0583996, the marriage certificate of the petitioners, Birth Certificates of the minors, the Petitioner's Degree Certificate, a photostat copy of the Petitioners' employment verification letter, the Certificate of title, Radio announcements, receipts and Newspaper Adverts to this effect, the Foster Care Application and Form of Undertaking, the Radio announcements, receipts and Newspaper Adverts, the Foster Care Application and Form of Undertaking marked "M and "N", the legal Guardianship Order and Ruling, the Recommendation Letter, the Petitioner's good conduct, the Petitioners' Medical Report, a certificate of good conduct from Uganda Police Force.

**13. Representation:**

The Petitioner was represented by Counsel Nyafwono Irene who filed written submissions.

**14.** When this matter came up for hearing on 29/9/2022 the petitioner, the children, the Probation and Social welfare office and the Social worke of Child's foundation were in court; Otim Devin told court that he is



11 years old resident of Jinja and that Brechje is his sister, Elias and Daney are his brothers and the petitioners look after all of them they are 'mama' and 'papa'; he does not know if he has any other father and mother;

**15.** Brechje Amalia Philippa Otim told court she is 10 years and goes to Hannak International school and lives with her parents the petitioners and does not know any other parents; her parents look after her; the Otim Suzan Den Hertog (the 2<sup>nd</sup> petitioner told court that no one has ever come looking for Devin who had been their son since he was one month and she loves both children;

**16.** Naigaga the Probation officer told court they did tracing through the media- Bukedde Newspaper and television since 2012 but nobody has ever come for the children; she presented her report where she recommends the adoption;

**17.** Counsel filed written submissions where she raised and resolved the following issues:

1. Whether it is in the best interests of the children that an adoption order be made;
2. Whether the petitioners are fit and proper persons to be appointed adoptive parents;

**18.** I have considered the facts of the case for each of the children and the evidence adduced together with the submissions of counsel; like counsel I shall address each child but for better flow I shall consider issue 2 first because suitability of the petitioners is key because if one

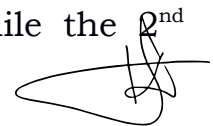


finds that the petition is in the best interests of the children but find the petitioners unsuitable, there is likely to be disgruntlement;

Issue 2. **Whether the petitioners are fit and proper persons to be appointed adoptive parents;**

**19.** The 1st petitioner holds a degree in theology while the 2<sup>nd</sup> petitioner is a social worker and they are a married couple (married on 31<sup>st</sup> July 2010); they work at Home Sweet Home- an organisation that takes care of vulnerable physically handicapped children; they deposed affidavits to the effect that they are financially capable; if appointed they shall get Ugandan passports for the children and will provide the children's necessities. Both petitioners are above 25 years of age and more than 21 years older than each of the children-the 1<sup>st</sup> petitioner having been born on 12<sup>th</sup> April 1984 while the 2<sup>nd</sup> petitioner was born on 12<sup>th</sup> September 1984 compared to the children where Devin Beau Joe Otim is 12 years and Brechje Amalia Philippa Otim is 11 years of age according to their birth certificates; the petitioners therefore comply with section 45 of the Children Act;

**20.** Section 46(1) of the Children act provides that a non-Ugandan citizen can only adopt a Ugandan child in exceptional circumstances; but even then she must have fostered the child for more than 12 months and must have stayed in Uganda for the same period; the 1<sup>st</sup> petitioner is Ugandan holder of passport No.A00274934 while the 2<sup>nd</sup>




petitioner the 2<sup>nd</sup> Petitioner is a citizen of the Kingdom of Netherlands and holder of a Netherlands Passport No. 161189465 and a Ugandan Certificate of residence NX54P1135; it shows that she has been in Uganda for 8 years; the petitioners have fostered both children for more than 12 months and even were granted legal guardianship of both children by this honourable court on 2<sup>nd</sup> May 2014; They have also attached certificates of good conduct from Uganda police and from the Dutch State Secretary Security and Justice in respect of the 2<sup>nd</sup> petitioner;

The petitioners have been recommended by the Probation and Social welfare officer Buikwe district pursuant to section 46(1)(d) of the Children Act;

**21.** Having been living in Uganda as a married couple with legal guardianship of the children since 2014, and having considered that the National Alternative Care Panel sitting on 29<sup>th</sup> and 30<sup>th</sup> June 2022 approved the 2<sup>nd</sup> petitioner; I find that the petitioners are suitable to adopt;

**Issue No. 1. Whether it is in the best interests of the children that an adoption order be made;**

**22.** Both children according to the evidence were abandoned and nobody ever claimed them despite the tracing; the petitioners have been with them for 8 years; the children appeared in court and did not know of any other parents; Devin Beau Joe Otim told court Brechje and





Rebecca are his sisters while Elias and Danley are his brothers; that the petitioners are his papa and mama respectively; according to the affidavit in support Elias, Danley and Rebecca are the petitioners' biological children; Brechje told court she lives with her parents and loves them; her parents look after her; while children have the right to know and be looked after by their parents, the right cannot be enforced when nobody has even bothered to claim the children;

**23.** Devin Beau Joe Otim, according to the report of the Probation and Social worker prepared by Naigaga Lydia, was found abandoned on the veranda of Rubaga Cathedral; he was found by a one Kasajja Pangalasio the cathedral cleaner; he deposed an affidavit to the effect that when he found the new born baby he reported the matter to police, the child was taken to Rubaga hospital and later taken to Malaika Babies home and no one has claimed him since; this was confirmed by Ochen Martin the police officer who was on duty when the case was reported, Shadah Nakaganda now in charge of the files of Malaika babies home since it closed; the petitioners met the child at the babies home;

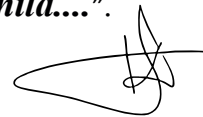
**24.** For Brechje she was dumped in a pit latrine in Gwafu village where she was rescued, taken to Mulago Hospital and later placed in a babies home; tracing led to a one Sekitto Ronald who was alleged to be the father but



DNA tests were negative; a one Nansiime Christina who through tracing was alleged to be the mother was never found; and further efforts on both print and electric media proved futile; the petitioners were contacted because they had earlier expressed interest to adopt a baby girl; and she was put in their care on 2/10/2012 and has been with them since.

**25.** I have considered the history of both children; particularly for Brechje she was left to die while for Devin the mother hoped someone would pick and raise him; if any of the parents were interested they would have reached out; both children are in a loving home and do not even know that the petitioners are not their parents;

**26.** **Section 3(1) of the Children Act** provides that the welfare of the child shall be of paramount consideration by this Honourable Court in making decisions as to who should adopt the child in issue. Article 3 of the United Nations Convention on the Rights of the Child states 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; 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....*".



**27.** Section 3(3) of the Children Act 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. The welfare principle has since been fortified by courts; (see in the matter of Deborah Joyce Alitubeera & Richard Masaaba (CA 70/2011 and in Re; M an Infant SCCA No. 22/1994); David Twesigye (an Infant) HCMA No. 004 of 2008; In the matter of N.B(an infant) By K (FC Guardianship Application 1 of 2020 and Re Maria Naluggya [1997] iv KALR);

**28.** I have considered what would happen if this petition is not granted and found that it would not be in the interests of the children who believe the petitioners' family to be their family. This petition is therefore in the best interests of the children; it is therefore granted.

It is hereby ordered:

- i. **Otim Zenon Joel and Otim Suzan Den Hertog** are appointed the adoptive parents of Devin Beau Joe Otim;
- ii. **Otim Zenon Joel and Otim Suzan Den Hertog** are appointed the adoptive parents of Brechje Amalia Philippa Otim.
- iii. Devin Beau Joe Otim is hereby declared the adopted child of **Otim Zenon Joel and Otim Suzan Den Hertog** and the relationship of



parent and child is hereby established with all rights and privileges incident thereto including the right of inheritance.

- iv. Brechje Amalia Philippa Otim is hereby declared the adopted child of **Otim Zenon Joel and Otim Suzan Den Hertog** and the relationship of parent and child is hereby established with all rights and privileges incident thereto including the right of inheritance.
- v. The parental rights of all others with respect to Devin Beau Joe Otim not previously terminated are hereby terminated.
- vi. The parental rights of all others with respect to Brechje Amalia Philippa Otim not previously terminated are hereby terminated.
- vii. 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 **Otim Zenon Joel and Otim Suzan Den Hertog** reflecting the parental relationships established herein.
- viii. **Otim Zenon Joel and Otim Suzan Den Hertog** shall have exclusive care, custody and control of the said Devin Beau Joe Otim free from claims or hindrances of all others and shall be responsible for his education, maintenance, protection and support.
- ix. **Otim Zenon Joel and Otim Suzan Den Hertog** shall have exclusive care, custody and control of the said Brechje Amalia Philippa Otim free from claims or hindrances of all others and shall be responsible for her education, maintenance, protection and support.
- x. The Petitioners shall have the right to live with the children wherever they may be to fulfil their parental duties.



- xi. The adoption order in respect of Devin Beau Joe Otim shall be furnished to the consular department of the ministry of foreign affairs;
- xii. The adoption order in respect of Brechje Amalia Philippa Otim shall be furnished to the consular department of the ministry of foreign affairs;
- xiii. Costs of the petition shall be borne by the petitioners.



Ketrah Kitariisibwa Katunguka

Judge.

5/01/2023

Delivered by email to:irenelaker@gmail.com

The Ruling delivered on 5/01/2023 has been recalled under section 99 of the Civil Procedure Act to correct spellings in names only. The rest of the Ruling remains the same.



Ketrah Kitariisibwa Katunguka

Judge

3/3/2023