

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
FAMILY DIVISION
ADOPTION CAUSE NO. 0065 OF 2022

IN THE MATTER OF THE CHILDREN ACT, CAP. 59 (AS AMENDED)

IN THE MATTER OF TAHAKANISIBWA SHARON (A MINOR AGED 6 YEARS)

AND

IN THE MATTER OF AKANDEKAHO NORAH (MINOR AGED 7 YEARS)

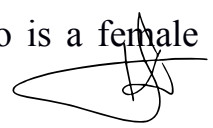
**IN THE MATTER OF AN APPLICATION FOR AN ADOPTION BY
MARTIN STEFANI AND BRIGITA ZINKO.**

Before: Justice Ketrach Kitariisibwa Katunguka

Ruling

Introduction;

1. Martin Stefani and Brigita Zino (herein called ‘the Petitioners’) bring this Petition under the Children’s Act Cap 59 seeking orders for the adoption of the children Sharon Tahakanisibwa and Norah Akandekaho, with all the necessary directions; and such further or 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, biological parents of two children Gea Stefani aged 9 years and Adam Stefani aged 6 years; they are citizens of Slovenia, who first arrived in Uganda in 2019 for charity services with Branch of Hope Africa; Martin Stefani is a male aged 45 years having been born on 9th September 1977; while Brigita Zinko is a female



aged 41 years having been born on 25th December 1980;they are desirous of adopting the children (**Tahakanisibwa Sharon** and **Akandekaho Norah**) aged 6 and 7 year respectively;

3. Martin Stefani is employed as a computer Programmer with Gamanza Services D.O.O in Solvenia, Brigita Zinko works as a personal trainer so they are gainfully employed and able to look after the two children subject of this petition; the Petitioners do not have any biological relationship with the children and are only interested in adopting them.
4. Sharon Tahakanisibwa is a female minor aged 6 years born on 5th May, 2016 in Kiruhura District to Musinguzi John and Kyakuhaire Enid; Norah Akandekaho is a female minor aged 7 years born on 15th September 2015 in Kiruhura district to Anthony Tinyefunza but details of her mum are unknown; both children were abandoned by their biological mothers when infants and left under the care of Mable Mirembe; as Mable Mirembe became weaker and could not adequately take care of herself it became increasingly difficult for her to take care of the children who were still at a young age; the children were not attending formal school so they were later taken to live in Iganga with the said Mable Mirembe's daughter; the petitioners had come to visit Iganga District for their charity activities; they saw the children and learning of their plight expressed interest in adopting them.
5. The Petitioners were introduced to the National Alternative Care Panel by the Probation and Social welfare officer of Iganga; A DNA profiling ordered by the Care Panel to ascertain the paternity of the fathers returned positive; on the recommendation of the Care Panel an application for fostering was granted to the petitioners by the family and Children court sitting at Iganga on 24th May 2021 and the Petitioners have fostered the children since; the Probation and Social Welfare Officer has recommended the adoption.



6. The Petitioners: do not have any criminal record in Uganda, their country of origin or any other country globally; have been subjected to health examinations and have been found healthy and suitable to proceed with the adoption of the children; are meeting the emotional, parental, social and mental needs of the children and have been placed in school; the Petitioner and Co Petitioner are proper and suitable to adopt the children and have been recommended by the welfare department of their country of origin as well as the teachers of their biological children.
7. The biological parents and guardians of the children have given their consent to the adoption of the children; the children have never been subject of an adoption order or petition before and their welfare will best be cared for; the adoption order made by this honourable court will be respected and recognised by the Petitioner's country of origin Slovenia; no reward has been paid or received by the involved parties and there is no reward agreed to pay in consideration to anyone for the adoption of the children; it is in the best interest of the children that the Petitioners be granted joint adoption of the children.
8. The Petition is supported by the Petitioners' passports No. 0909977500379 and Passport No. 2512980505195, respectively; a copy of the Marriage confirmation, a copy of proof of employment and bank statements of the Petitioners, a copy of a birth certificate of Sharon Tahakanisibwa and that of Norah Akandekaho, a copy of the Interpol Certificate of clearance, a Copy of the Birth Certificate of Shifra Ninsiima, copies of the DNA profiling reports, copies of the Foster Orders, a copy of the Probation and Social Welfare supervision report, copies of Certificates of good conduct, copies of the medical reports, copies of school work, fees, receipts, copies of recommendation reports and letters with their translations, copies of the parental consents, and a copy of the home study report by the Centre for Social Work

Slovenia



Representation;

The Petitioners were represented by Counsel Peter Mangeni who filed written Submissions on the following issues:

1. Whether the petitioners qualify to be appointed adoptive parents of the children;
2. Whether it is in the best interests of the children to grant the adoption.

The case.

9. The petitioners are Slovenian citizens a married couple biological parents of two children; on one of their charitable activity visits at Branch of Hope Africa they were introduced to the children by the probation and Social Welfare officer of Iganga District and expressed interest to adopt the children; they were cleared by the National Alternative Care Panel and have fostered the children for one year; they now wish to adopt the children.

10. Sharon Tahakanisibwa aged 6 years is a biological child of Musinguzi John and Kyakuhairi Enid who were working for Meble Mirembe of Kiruhura District; the mother abandoned the child at the said Meble Mirembe's home; Musinguzi the father was a casual labourer who had no capacity to take care of the child; so Meble Mirembe took responsibility over the then 12 months old child; the child's mother is poor and unable to look after her; Meble Mirembe can no longer look after the child as she is now weak.

11. Norah Akandekaho is a female aged 7 years born to Anthony Tinyefuza but the details of her mother are not known because she was a teenager who had come to visit her relatives in the village and got into a relationship with Anthony Tinyefuza; she got pregnant and after she gave birth she abandoned the 4 days old baby; the baby was brought to Meble Mirembe an aunt to Anthony Tinyefuza; the mother never returned to claim her baby and even the relatives she came to visit left the village; so the names of Meble Mirembe were indicated on the birth certificate as the biological mother of the child; the father is unable to take care of the child so Meble Mirembe was taking care of the child until she could no longer manage so both children were



taken to Iganga (to live with a niece of Meble Mirembe's); where the petitioners met them; the petitioners are suitable to adopt; hence this petition.

I shall consider issue 1 and the outcome shall determine whether there is need to consider issue No. 2.

The law.

12. Adoption of children in Uganda by non-Ugandans is provided for by section 44 (1) (b) of the children act which provides: *'an application for an adoption order may be made to the High Court where the child or the applicant is not a citizen of Uganda, and the court may, subject to this Act, grant the application'*. The petitioners are citizens of Slovenia according to their passports No. 0909977500379 and Passport No. 2512980505195; concerning the children the petitioners presented certificates purportedly issued by Kiruhura District Council to show that the children are both Ugandan citizens born on 5/05/2016 for Tahakanisibwa Sharon; and on 15/09/2016 for Akandekaho Norah; the evidence adduced through the testimony of Enid Kyakuheire holder of National Identity card No.CF93017103CCGE (mother of Tahakanisibwa Sharon) and the testimony of Antony Tinyefuza (father of Akandekaho)both Ugandans shows that the children are Ugandan citizens under article 10(a) of the Constitution of Uganda.

- 13.**Section 45(1)(a) of the Children Act (as amended)**, provides than 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**;

- 14.While the petition at paragraph 5 and the affidavits in support at paragraph 2 deposed by both petitioners show that the petitioners are married there is no Marriage Certificate to prove this; what the petitioners rely on is a translated

document entitled 'CERTIFICATE PROVING THAT MARRIAGE AND COHABITATION ARE EQUAL IN THE CASE OF ADOPTION' issued by Centre for Social work LJUBLAJANA SISKI UNIT.

15. A couple for purposes of section 45 means those persons married under the various forms of marriage under the law of this land to wit: Marriage under the Marriage Act; or Marriage under the Customary Marriages Act or Marriage under Mohamedan Act; or Hindu Marriage under the Hindu and Divorce Act; (see Paper by Justice Centres in Uganda).

16. Even if it was proved that cohabitation is equal to marriage in the petitioner's country the law of this land on adoption is what is applicable; people who are cohabiting therefore cannot be considered a couple for purposes of section 45 of the Children Act.

17. On the age requirement section 5(1) (d) of the Registration of Persons Act 2015 provides that; 'The functions of the Authority are to register births and deaths'; section 3 of the same act provides that "Authority" means the National Identification and Registration Authority established under this Act;' the certificates presented are not recognised as birth certificates; as they were not issued by the National Identification and Registration Authority; the ages of the children therefore cannot be determined without a birth certificate; It was therefore not possible to determine the age differences.

18. **Section 46 of the same act** provides that a person who is not a citizen of Uganda may, in exceptional circumstances, adopt a Ugandan child if **he/she has stayed in Uganda** for at least one year; has fostered the child for at least one year under the supervision of a Probation and Social Welfare Officer (PSWO); does not have a criminal record; has a recommendation concerning his/her ability to adopt from his/her country's Probation and Social Welfare Officer or other competent



authority; and has satisfied the court that his/her country of origin will respect and recognize the adoption order.

The petitioners presented translated documentation to show that they do not have a criminal record in their country of origin;

19. Section 46(1) (c) provides that (1) 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 twelve months;

(b) has fostered the child for at least twelve months under the supervision of a probation and social welfare officer;

(c) does not have a criminal record; (emphasis supplied).

20. An inter country adoption being a process where the petitioners' suitability should as much as possible meet global security requirements there is need for clearance by Interpol and the Uganda Police; Having no criminal record in the petitioner's country of origin does not mean crime cannot be or has not been committed elsewhere in the world or in Uganda during the petitioner's time of fostering a child; that is the reason why the clearance expires after 6 months, and this clearly would be during the time the petitioner is in Uganda complying with the 12 months stay and fostering under, not only the supervision of the Probation Officer but also under the watch of police; the petitioners did not attach clearance from the Uganda Police and Interpol.

21. On the requirement for 12 months fostering and stay in Uganda although there are foster orders on record there is no proof that the petitioners fostered the children under the supervision of the Probation and Social Welfare officer; Saidi Mukoti the Senior Probation and Social Welfare officer testified that the petitioners after



getting the foster orders were in Uganda for a very short time and were called back to their country because the 1st petitioner's mother was sick after which there were travel restrictions; that he has known the petitioners; they have a strong bond with the children and have supported them for two years so the petition should be granted and the petitioners allowed to travel with the children to their country in the best interests of the children; because their biological parents are not fit to take care of them.

22. I have considered the evidence on record and the testimony of the 1st petitioner who told court that they have never stayed with the children for at least a month because he is a full time employee; the 2nd petitioner told court that they are not able to leave their country for 1 year; but that they bond with the children electronically; counsel cited **In the Matter of Innocent Turyahabwe(Child), Adoption Cause No.10/2017** where Justice Mukiibi stated and I quote:

'...the requirement for fostering a child for one year does not solely mean having physical custody of the child. It includes any conscience effort made by prospective petitioners to assist/support a child through any practical arrangement. Should there be a need for a term of this art, this may be called 'constructive fostering';

23. Counsel then argued and invited court to use its inherent powers and waive the strict requirement to foster for a continuous period of one year; that the parents have consented and the probation officer has recommended the adoption so the petitioners ought to be found fit to adopt.

24. While court may under section 46(4) of the Children Act, waive any of the requirements under subsection 1, constructive fostering and bonding through technology would deny the children the right to know the person(s) who intends to take them for life; the welfare of children being the guiding principle of decisions

concerning children(section 3 of the Children Act); should never in the process put their lives at risk; both petitioners have not convinced court that they deemed compliance with the law of the land important.


25. With all due respect I do not believe that a child can be raised through technology, for technology does not only have time limits, it cannot be monitored/ supervised by the probation officer otherwise it may be stage managed; Black's Law Dictionary 11th Edition defines foster as *'To give care to or to promote the growth and development of (something or someone) esp... to give parental care to (a child who is not one's natural or legally adopted child). 2. To give aid or encouragement to; to sustain or promote'*; Section 1(j) of the Children Act defines "foster parent" as 'a person not being the biological mother, father or relative of the child who assumes parental responsibility of the child by way of a care order'; parental responsibility is provided for under section 4(1) of the children act; it provides that 'A child is entitled to live with his or her parents or guardians'. waiver of any of the conditions should never be driven by the petitioner's convenience because child based cases are driven by the children's best interests and nothing else.

26.It is my considered view therefore that a parent or anyone who takes on the duties of parents albeit and especially under supervision ;should be physically there at least for most of the required time unless the child's life is in danger for example if the child needs urgent medical attention; Article 34 of the Constitution provides that children have a right to be cared for by their parents; section 4(1) (a) of the Children Act provides that children have a right to live with their parents or guardian. I would therefore with humility disagree with the notion of constructive fostering.

27. Before I take leave of the matter I have found it necessary to state that there was contradiction in the pleadings; the name of the mother to Akandekaho Norah is alleged to be unknown in the pleadings and allegedly that's why the child's mother was 'registered' as Meble Mirembe yet Antonny Tinyefuza the father testified that the child's mother was called Kabukanga Karen; that when he asked about her he was told she was married very far; yet no due diligence was made to look for her; The existence of the organisation where allegedly the petitioners used to carry out charitable activities was never proved; finally it is alleged that the National Alternative Care Panel cleared the petitioners but this court did not see any report.

28. In the above premises, I do not find the petitioners suitable to adopt. The issue as to whether the petitioners qualify to be appointed adoptive parents of the children is answered in the negative.; and I do not find it useful to determine whether the petition is in the best interests of the children.

29. The Petition is therefore hereby dismissed. The Petitioners shall meet the costs of the petition.


Ketrah Kitariisibwa Katunguka

Judge

19/06/2023

Delivered by email to: petermangeni@gmail.com

If dissatisfied with the Ruling the petitioners may appeal to the Court of Appeal of Uganda within 14 days from this Ruling.