

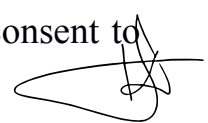
THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
(FAMILY DIVISION)
ADOPTION CAUSE NO.66 OF 2022
IN THE MATTER OF NAKIVUMBI LOVINCE (CHILD)
AND
IN THE MATTER OF PETITION BY SARAH ELIZABETH
STOLTZFUS FOR THE ADOPTION OF NAKIVUMBI LOVINCE
(CHILD)

Before: Justice Ketrach Kitariisibwa Katunguka.

Ruling.

Introduction:

1. Sarah Elizabeth Stoltzfus petitions this court under the provisions of article 139(1) of the Constitution of the Republic of Uganda, 1995; sections 14 and 33 of the Judicature Act, sections 3, 4, 13, 14, 45 and 46 of the Children Act and Rule 17 of the Children (Adoption of Children) Rules); for an adoption order in respect of Nakivumbi Lovince (herein called 'the child') and for an order that the child's name be changed to Lovince Grace Stoltzfus.
2. The petition is supported by the petitioner's affidavit to the effect that: the petitioner is a female adult American citizen aged 33 years currently resident in Uganda at Kigato L.C1, Nyendo, Mukungwe Division, Masaka city since 2011; while in the United States of America resident at 130, Bergman, New Holland; she is single and has no biological children; she volunteers with Okwagala N'Okufaayo family in Masaka district as a sponsorship assistant.
3. The petitioner learnt of the plight of the child in 2018; the child was abandoned and the whereabouts of her mother were unknown; the child's biological father is unknown; the child was then placed in the foster care of the petitioner and they have since bonded; and the petitioner has decided to fully adopt the child and make her part of her family, for the child's benefit and welfare; the petitioner has not received or agreed to receive and no person has made or agreed to make or give any payment or reward or consideration for consent to



this petition; the petitioner is free from any communicable physical and mental impairment that could endanger the child.

4. The petition is also supported by the affidavit of Madrine Nakafuuma and that of Wangi Alon a social worker; and further supported by; the petitioner's United States of America passport No. 653196435 and her birth certificate; a sale agreement in respect of the petitioner's property in Uganda; entry visas and permits; letter of employment; care order and foster care certificates; probation and social welfare report; home study report; recommendations; certificate of no criminal record; police clearance certificate; medical report; certificate of registration of Okwagala N'Okufaayo Family; birth certificate of the child; Newspaper advertisement calling for the child's biological mother ; and the child's medical report;

Representation:

5. The petitioner is represented by counsel Mugabi Rebecca of M/s Sseryazi, Mugabi & Co. Advocates; who filed written submissions on the following issues;

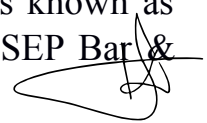
- I. *Whether this honourable court has jurisdiction to entertain the matter?*
- II. *Whether the petitioner is suitable to be declared the adoptive parent of the child?*
- III. *Whether the petition is in the best interest of the child?*

One of the prayers sought is for change of the child's name from Nakivumbi Lovince to Lovince Grace Stoltzfus.; I will therefore add a 4th issue of ***whether the child's name may be changed.*** The issues for court's determination shall therefore be:

- 1. Whether this honourable court has jurisdiction to entertain the matter?*
- 2. Whether the petitioner is suitable to be declared the adoptive parent of the child?*
- 3. Whether the petition is in the best interest of the child?*
- 4. Whether the child's name may be changed.*

Background of the child:

6. According to the report of the Senior Probation and Social Welfare Officer Masaka city, the child Nakivumbi Lovince was abandoned by her biological mother on 24/12/2016; her father and relatives are not known; according to the evidence of Madrine Nakafuuma, the child's biological mother was known as Ainembabazi Phionah who in 2015 was working as a waitress at SEP Bar &



Guest house and had come with the child; Madrine was a Manager at the said guest house; on 24/12/2016 Ainembabazi sent the child to the home of Madrine for the festive session but she herself did not join them; she did not pick the child; Madrine couldn't maintain the child as she was earning a meagre salary and had a family of five children;

7. On 7/1/2017 Madrine made a report to the chairperson Local Council 1 of her area concerning the child and the mother; she later filed a report to the police station in Masaka; the officer in charge at the police station referred Madrine to the Probation and Social Welfare Officer who took on the child; the child was sent to a Non-Government Organization called Kwagala N'Okufaayo Family; the child's mother never claimed the child and her whereabouts are unknown despite the advertisements on Buddu Broadcast Station Services Ltd; New Vision; attached to the petition is a copy of the advertisement in Orumuri newspaper dated 29/3/2021 containing a picture of the child and her purported mother;
8. The petitioner who was volunteering at the NGO Kwagala N'Okufaayo Family came to know the child in 2018; on 15/10/2018 she started fostering the child; on 25/1/2022, a care order was issued to her vide Family Cause No.076 of 2021 by the Family and Children Court at Masaka; the child is currently enrolled at West River Academy, Colorado United States of America; she is under the care and custody of the petitioner.

Court's determination:

Issue No.1: Whether this honourable court has jurisdiction to entertain the matter?

Section 44(1) (b) of the Children's Act as amended provides that the High Court has jurisdiction over adoption petitions where either the petitioner or the child is not a citizen of Uganda. Evidence shows that the petitioner is a citizen of the United States of America and holder of passport No. 653196435; the child's birth certificate adduced in evidence shows that she a Ugandan citizen born on 24/12/2010.

This court is therefore seized with jurisdiction to entertain this matter.

Issue No.2: Whether the petitioner is suitable to be declared the adoptive parent of the child?

9. **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 them has attained the age of twenty five (25) years and is at least twenty one (21) years older than the child;

10. **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;
11. **Section 46 of the Children 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.

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

The age requirement.

12. The petitioner's passport shows that she was born on 18/06/1989 making her 33 years; the child's birth certificate shows that she was born on 24/12/2010 making her 12 years old; the petitioner is over 25 years of age and is 21 years older than the child; therefore, the age requirement is fulfilled.

Stay in Uganda.

13. In her evidence, the petitioner testified that she has lived and resided in Uganda since 2011; and been volunteering at the None Governmental Organisation 'Kwagala N'Okufaayo Family' Masaka City, since 2018; she relied on a recommendation letter from her employer; copies of her visa permits show that she entered Uganda on 6/11/2020; she held a work permit dated 2/11/2020; the current work permit dated 26/02/2022 expires on 03/03/2024; stay in Uganda for over 12 months has been proved.

Foster period.

14. The petitioner relied on a foster care placement of Nakivumbi Lovince with her , dated 15/10/2018; there is a care order dated 25/1/2022; The petitioner has fostered the child under the supervision of the probation and social welfare officer for the required 12 months' period.

Proof of no criminal record.

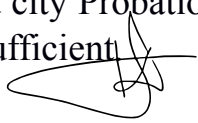
15. The petitioner presented a copy of a certificate of good conduct dated 12/1/2023 and a police clearance certificate issued by the Directorate of Forensic Services dated 16/11/2021; to the effect that the petitioner has never been convicted of any criminal offence or come to adverse police notice; the requirement has been fulfilled.

Consent of the parent if known.

16. Section 47(1) of the Children Act requires the consent of the parent of the child to be secured if known; the child's biological mother is said to be Ainembabazi Phiona whose whereabouts are unknown; the child was abandoned in 2016 and no information concerning her is available; the father is unknown and there are no known relatives; in spite of the radio and newspaper adverts nobody came to claim the child; in the premises, the consent of the parents of the child is waived;

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

17. The petitioner in her affidavit deposes that the government of the United States of America will respect the order of this court; a letter of recommendation from Russel, Krafft & Gruber the petitioner's attorney at law based in the United States of America states that the home study report conducted by Maria Nagawa a Senior Probation and Social Welfare Officer in Masaka Uganda is in tandem with the standards set in the United States of America; and further that the petitioner meets the eligibility requirements.
18. Section 46(3) of the children Act gives this court the discretion to waive any of the requirements in exceptional circumstances; the petitioner has stayed in Uganda since 2020 and is still in the country; her home country cannot give a comprehensive report on her suitability to adopt especially since they have not watched her with the child as the Senior Probation and Social Welfare Officer in Masaka has done; Section 46(5) of the Children Act (as amended) provides that advocates may facilitate court with information to protect the welfare of children; the report of Russel, Krafft & Gruber the petitioner's attorney at law based in the United States of America is found useful in determining the suitability of the petitioner; the said attorney at law Russel, Krafft & Gruber also states that if the adoption is successful, the United States America will allow the child to immigrate into the United States of America; the report of the of Masaka city Probation officer dated 11/01/2022 recommending the adoption is found sufficient



Financial capability;

19. For a person to qualify to adopt, he or she must be financially stable to meet the children's needs; the petitioner averred that she is financially stable and will provide the necessary atmosphere for the child to develop into her full potential; as proof of her financial capability, the petitioner presented a copy of her financial report of 2021 issued by Mission Assistance International; showing an amount of \$29,2467; and another financial statement dated 18/5/2022 issued by Branch Community showing that the petitioner has received a total sum of \$9,972.24 for the years 2021; the petitioner has also managed to foster the child and looked after her for more than a year; I am therefore satisfied that the petitioner is financially capable of meeting the child's needs.

Report of the Alternative Care Panel.

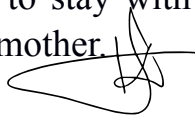
20. The High Court Administrative Circular No. 2 of 2020; Circular Instruction No.2(5) provides that the court shall take into consideration the report of the Alternative Care Panel before granting any adoption order where the petitioner is a non-Ugandan; the National Alternative Care Panel report for the meeting held on 28th and 29th of April 2022 show that the petitioner was recommended;
21. I find that the petitioner has fulfilled the requirements under section 45 and 46 of the Children Act as amended and so qualifies to be appointed the adoptive parent of the child.

Issue No.3: *Whether the petition is in the best interest of the child?*

22. Article 3 of the UN Convention on the Rights of the Child states 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; this is echoed in article 34 of the Constitution of Uganda and laid down in section 3(1) of the Children Act which provides that the welfare of the child shall be of paramount consideration for this court in making decisions as to who should adopt the child in issue.
23. 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...*". 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;

24. Welfare of a child is a wholesome space where the child's stability of growth and provision including; emotional, financial, food, shelter, education, safety, health is assured;(see also Pulkeria Nakaggwa v Dominico Kiggundu (1978) HCB 310, where court stated that "... though not capable of an exact definition, welfare means in relation to custody of children, all circumstances affecting the well-being and upbringing of the child have to be considered."
25. The child subject of this case is aged 12 years; she was abandoned by Ainembabazi Phiona believed to be her biological mother at the home of Madina Nakafuuma in 2016 when the child was just approximately 6years; her biological father is unknown; efforts to find out the whereabouts of her mother were futile; she ended up in an orphanage 'Kwagala N'Okufaayo Family'; while volunteering at the NGO in 2018 the petitioner encountered the child; and started fostering the child in 2018 with no intention of adopting the child because it was hoped that the mother of the child would come and take the child; newspaper and radio adverts were published calling for the mother in vain; In 2021, the petitioner decided to adopt the child.
26. I have considered the fact that the child has since 2018 been under the custody and care of the petitioner of the child; the petitioner has enrolled the child in school 'West River Academy' based in California Colorado U.S.A, as proved by a copy of letter of confirmation of enrolment dated 1/7/2022; in her report the Senior Probation and Social Welfare Officer of Masaka City, described the petitioner as a compassionate individual who wants to provide a stable and loving home for the child; with a long term commitment that the child achieves her long term developmental milestones; further that the petitioner has a conducive home for the upbringing of the child with a support system that includes relatives and friends;
27. In court, the child stated that she knows her biological mother's names; whose whereabouts she knows not; that in case her mother comes, she would tell her that she would prefer to stay with the petitioner but would like to be allowed to visit her biological mother.



28. **Article 34 of the 1995 Constitution of the Republic of Uganda, 1995** provides that, children shall have the right to know and be cared for by their parents or those entitled by law to bring them up. *Section 4(1) and (2) of the Children Act* provides: (1) A child is entitled to live with his or her parents or guardians. (2) Subject to subsection (1), where a competent authority determines in accordance with the laws and procedures applicable that it is in the best interests of the child to separate him or her from his or her parents or parent, the best substitute care available shall be provided for the child.

29. In this case, the biological mother abandoned the child; the father including relatives remain unknown; photographs attached to the petition show that the petitioner has created a family bond with the child; I agree with the submissions of counsel for the petitioner that this petition is in the best interests of the child.

Issue No.4. Whether the child's name may be changed;

30. Adoption is the creation of a parent child relationship by a judicial order between 2 parties who are unrelated creating a life-long relationship of parenthood between the child and the adoptive parent. *See Re-Victoria Namutosi(Adoption cause No. 09 of 2017)*. 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. The child subject of this petition has already bonded with the petitioner and I do not see a reason why as a parent she does not have a right to name her.

Issue No. 4 is answered in the affirmative.

In the premises I am granting the petition and I hereby make the following orders.

- i. The petitioner **SARAH ELIZABETH STOLTZFUS** is hereby appointed the adoptive parent of the child **NAKIVUMBI LOVINCE**.
- ii. The child **NAKIVUMBI LOVINCE** is declared the adopted child of **SARAH ELIZABETH STOLTZFUS** and the relationship of parent and child is hereby established with all rights and privileges incidental thereto including the right of inheritance.
- iii. The child shall be given an opportunity to interact with her biological mother if she shows up.
- iv. The Petitioner **SARAH ELIZABETH STOLTZFUS** shall have exclusive care, custody and control of **NAKIVUMBI LOVINCE** free

from claims or hindrances of all others and shall be responsible for her education, maintenance, protection and support.

- v. The Registrar General of Births and Deaths is hereby directed to make an entry recording this adoption in the Adopted Children Register and to issue a certificate in favour of **NAKIVUMBI LOVINCE** reflecting the names and parental relationship established herein.
- vi. The adoptive parent is allowed to give the child a name of her choice;
- vii. This adoption order shall be furnished to the consular Department in the Ministry of Foreign Affairs Kampala;
- viii. The petitioner shall bear the costs of this Petition.



Ketrach Kitariisibwa Katunguka
Judge
24/05/2023

Delivered by email to: rebeccamugabi@gmail.com