THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA

AT MENGO

CORAM: (MANYINDO. D.C.J., ODOKI J.S.C., & TSEKOOKO J.S.C.)

CIVIL APPEAL 22/1994

IN RE M (AN INFANT)

(Appeal from the judgment and Order of the High Court of Uganda at Kampala (Byamugisha, J..) dated 5th September, 1994)

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ADOPTION CAUSE NO. 9 OF 1994.

JUDGEMENT OF MANYINDO, D. C. J.

This is an appeal against the Ruling of Byamugisha J., whereby she rejected the appellant's petition for an order for the adoption of the Infant. The Infant is an Orphan. His mother was killed on 17-4-87, by her own husband and father of the infant; one Katarihya. The latter died on 19-1-88, while on remand at Mityana Government Prison pending trial for his wife's murder.

The Infant was taken to the Probation Officer, Mityana B.K. Lubega by a Good Samaritan. Lubega in turn presented the infant to a Magistrate Court at Mityana which committed him to the care of Sanyu Babies Home in Kampala, as his relatives could not be traced. Subsequently, Sanyu Babies Home and the Probation Officer, Mityana decided in the circumstances, a foster parent or foster parents are sought for the infant.

The appellants, who are husband and wife, offered to foster the Infant. Accordingly, on 3-2-89**,** the Buganda Road magistrate's Court made an order committing the Infant to the care of

the appellants. The infant has been with them ever since. Sometime in 1994, the appellants petitioned the High Court for an Order of Adoption of the infant.

Byamugisha J, who dealt with the matter found that the appellants and Infant were Citizens of Uganda; that the appellants had attained the requisite age and that each appellant was 21 years older than the Infant; that the Infant was 10 years old (well below the permitted maximum age of 21 years); that the consent of the Infants parents could not be obtained as they were dead and that the Infant had been in custody of the appellants for 4 years.

However, the Learned Judge was of the view that the appellants, who lived partly in Uganda and partly in Austria, were not resident in Uganda and partly in Austria, were not resident in Uganda within the meaning of Section 4(5) of the Adoption of Children Act (Cap 216). She accordingly dismissed the petition.

The Section states as follows:

"4 (1)…….. ..

(2)……..

(3)…….

(4)……

(5) An adoption order shall not be made in favour of any applicant unless he is a British subject or a Citizen of Uganda and is resident in Uganda or in respect of any infant unless he is a British subject or a Citizen 01 Uganda and is resident in EastAfrica."

The affidavit evidence of the appellants was to the effect that they had a permanent residence at Bbunga in Kampala. The first appellant Fredrick Kiyingi is employed by the United Nations Industrial Development Programme Organisation {UNIDO) based in Austria. He stays there with his wife (second appellant), their only four year old child Moire Kirabo Kiyingi and the Infant. They come to Uganda from time to time and certainly spend all their leave time here at their Bbunga residence. Indeed the Trial Judge observed in her ruling that at the time of presenting the petition the appellants were here on 3 months leave.

But she held that was not enough. In her view, residence means a home where one lives and where one can be found daily. It cannot mean a home which one visits once or so a year while on leave. She followed the decision of Harman, J, in**: <u>Adoption Application (1951) 2 All</u>**

LR. 930. Harman, J, interpreting Section *2(5)* of the British Adoption Act 1950 which is almost similar to S. 4(5) of our Adoption of Children Act. In that case the petitioner was a Briton working in the British foreign Mission in Nigeria. Harman, J declined to grant the adoption order on the ground that the Petitioner had to be resident in British on a full time basis.

It is remarkable that the Learned Judge did not allude to her earlier decision in **Adoption Cause No. I of 1993.in the matter of Yonne Kamahuna An Infant** where she had held that: -

> "To constitute residence there must be a presence in Uganda for a considerable period of time. Both petitioners are resident in Britain according to their affidavits. There is nothing before me to show that the petitioners have a fixed place of abode in Uganda or have lived in Uganda for a Considerable period of time in the past or even now. They do not therefore satisfy the requirements of residence."

The word residence -is not defined in the Act. Harman, J, gave a very restrictive interpretation of the British provision in my view, but then he was dealing with a highly prohibitive Act. It was against British Citizens living abroad adopting British Citizens. I do not think that it was the intention of the legislature to stop Ugandans living abroad on a temporary basis from adopting Ugandan children. In my view it is right to adopt a liberal interpretation of the word residence as Lord Denning (M.R.) did in: **Fox V. Stirk (1970) 3 All. E.R. 7** (Court of Appeal). In that case the Court had to construe the word residence for the purpose of registering as voters for elections. The law required a voter to be resident where he wished to vote at the time he registers. The Election Officer disqualified students who studied at Bristol and Cambridge and lived there for about 30 weeks in a year. He thought that they were not residents.

Lord Denning held in the leading Judgement of the Court, that—

(a) one can have two residences and reside in both;

(b) a temporary presence at an address does not make one a resident there and;

(c) that temporary absence, depending on the circumstances of the case,

> does not deprive one of his residence. He found that the students were either resident at Cambridge or Bristol as well as at their respective parent's places.

Byamugisha J's observation in: **Adoption Cause No. 1 of 1993** (supra) is in line with the decision of Lord Denning which is to be preferred. She should have applied the principle in this case. I agree with Counsel for the appellants that she was wrong to hold that the appellants were not resident in Uganda.

I would accordingly allow the appeal, set aside the Ruling of Byamugisha J, and substitute an Order granting an Adoption Order to the appellants. I would order that the petitioners bear the costs of the appeal. As Odoki, J.S.C. and Tsekooko J.S.C. also agree, it is so ordered.

Dated at Mengo this 3rd day of May, 1995

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S.T.MANYINDO

DEPUTY CHIEF JUSTICE

I CERTIFY THAT THIS A
TRUE COPY OF THE ORIGINAL.

E.K.E TURYAMUBONA

DEPUTY REGISTRAR THE SUPREME COURT.

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JUDGMENT OF ODOKI, J.S.C

I have had the advantage of reading in draft, the judgment prepared by Manyindo D.C.J. and i agree with him that this appeal must be allowed. I shall only add a few comments.

The Learned Judge held that the only issue to resolve in the case was whether the petitioners

and the infant were resident in Uganda. She referred to Section 4(5) of the Adoption of Children Act, which provides,

> "An adoption order shall not be made in favour of an applicant unless he is a British Subject or a Citizen of Uganda and resident in Uganda or in respect of any infant unless he is a British Subject or a Citizen of1Jganda and is resident in East Africa."

The Learned Judge then set out to find the meaning of the word resident. She said: "The term resident is not statutorily defined. But the cardinal principle in the interpretation of Statutes is to put upon the words of the legislature honestly and faithfully its plain and rational meaning according to its express or manifest intention: See Opoya V. Uganda (1967) E.A. 745. In other words, the primary duty or the Court is to interpret legislation in such reasonable manner so as not to defeat the intention and purpose for which the legislation was made.

According to Stroud's Law Dictionary, 4th edition page 2359, the word "residence" is flexible and must be construed according to the object and intent of the particular legislation. But essentially it means a home where a person is supposed to live and sleep and where he can be found daily."

She concluded that since the petitioners had been living with the infant in Austria since 1989, and they came to Uganda once a year while on leave, they were both and the Infant not resident in Uganda.

With respect, I think that the Learned Judge gave the word resident too restrictive an interpretation considering the intention and purpose of an Act. The Learned Judge addressed herself correctly on the principles of interpretation but she did not apply them correctly to the facts of this case.

In its ordinary meaning the word resident may refer to permanent residence, ordinary residence or temporary residence. The act did not specify which kind of residence was required for the purpose of adoption. It seems to me that what was intended was to require some substantial presence in or connection with Uganda. It is not necessary in my view for some one to have a home where he lives and sleeps and can be found daily, before he is taken to be a resident. A person can have a permanent resident in one place and a temporary or ordinary residence in another where he stays for business, employment, education, or other reasons.

In the present case it was established that the Petitioners lived in Austria where the first petitioner was employed in the United Nations Industrial Development Organisation (UNIDO). But it was also established that the Petitioners were Uganda Citizens who had a permanent home at Bbunga near Kampala where they spent their holidays once every year. The Infant had been living with them since 1989. In these circumstances, a liberal and purposeful interpretation ought to have been placed on the residential status of the Petitioners and the Infant because they had a permanent connection with Uganda and therefore had long term residential interests in Uganda.

In my judgment, therefore, the petitioners and infant were resident in Uganda because they had a permanent home in Uganda.

Finally, I wish to point out that in adoption proceedings as in other matters relating to children, the guiding principle is that the best interests of the child are paramount. The Learned .Judge was alive to this principle when she said,

“1 have no doubt the adoption order if made would have been for the welfare of the Infant. The Petitioners have been taking care of the Infant for quite sometime and since the infant was committed to their care until the attainment of 16 years of age the status quo will be maintained.

The best interests of the infant required that the petition for adoption be granted rather than dismissed.

I concur in the orders proposed by Manyindo, Deputy Chief Justice.
Dated this ...3rd day of May 1995.

B.J.ODOKI,

JUSTICE OF THE SUPREME COURT

I CERTIFY THAT THIS IS A TRUE COPY OF THE ORIGINAL.
E.K.E. TURYAMUBONA,

DEPUTY REGISTRAR, THE SUPREME COURT

JUDGMENT OF TSEKOOKO. J. S.C.

I have had the benefit of reading in draft the judgment of MANYINDO, D.C.J. I agree with his conclusions that the appeal must succeed.

I will make some observations with particular reference to **section (5) of Section 4of the Adoption of Children Act, (Cap 216 of the laws of Uganda)** I shall herein after refer to it as the Act. The interpretation of that subsection has lead to many interesting decisions in the High Court in the last few years respecting many adoption applications. The decision from which this appeal arises is but one of many such decisions. These applications would on moral grounds evoke sympathy and liberal approach in interpreting Section 4(5) but lam aware that Courts apply the law as it is and not morality.

The Learned Judge refused the appellants' petition to adopt the Infant because, according to her, both the Infant and the appellants are not resident in Uganda within the meaning of **Subsection (5) of Section 4** although the appellants actually own their permanent house at Bbunga, Kampala in Uganda where they normally reside whenever they happen to be in

Uganda on leave and probably for any other purpose. The application was in fact heard when the appellants were on leave and residing there. The Learned Judge referred to three other decided Adoption Causes of the High Court of Uganda and to the English **Adoption Application** No. **52/51 (1952) 1 Ch. 16.** Where, in almost similar circumstances, applications for adoption were also refused. I think there may be more applications which have been dismissed in the High Court besides the three alluded to by the Learned Judge.

There is thus a problem of some importance because in a number of the petitions the Infant subject of the application appears normally to be, as is the case here, in dire need of Adopt ion.

In view of other similar decisions, in fairness to the Learned Trial Judge, she cannot be unduly criticised for following the general trend.

Subsection (5) of 5.4 states:-
"(5) An adoption order shall not be made in favour of any applicant unless he is a British Subject or a citizen of Uganda and is resident in Uganda or in respect of any infant unless he is a British subject or a citizen of Uganda and is resident in East Africa."

A superficial reading of the Subsection suggests that the provisions prohibit the making of an adoption order unless:

(a) That applicant is a British Subject or a Citizen of Uganda and;
(b) That applicant is resident in Uganda, and further;
(c) The infant is a British Subject or a Citizen of Uganda, and;
(d) That Infant is resident in East Africa.

Prima facie all the four conditions should be fulfilled at the time of the making of the adoption order before an adoption order can be made.

The Learned Judge found that the appellants and the infant are Ugandan Citizens and so conditions (a) and (c) were fulfilled. Like Harman, J., in **Adoption Application 52/51.** The Learned Judge in the Court below had no doubt at all that if made the order would be for the benefit of the infant. But because the appellants and the Infant reside in Austria where the

appellants are employed by the United Nation Industrial Development Programme organization (IJNIDO), the Learned Judge followed the other decided cases and held that even though the appellants and the infant come to Uganda during leave and actually reside in their house during such leave (in the appellant's residence at Bbunga,conditions (b) and (d) were not fulfilled and so she refused the application.

The only ground of appeal states:

"That the Learned Trial Judge erred in law and fact when she held that the appellants and the infant are not residing in Uganda."

I have earlier stated that there have been other decisions of the High Court similar to that of the Learned Judge, which decisions will in effect be overturned by the success of this appeal. I will set out submissions of Mr. Babagumira as accurately as I understood him and give my own views on the matter as I understand the Law.

Learned Counsel submitted that for the purpose of **Section 4(5)** a Ugandan working abroad or having business abroad but who has a permanent residence in Uganda is for purposes of the Subsection resident in Uganda. He submitted that such Ugandan who is temporarily resident outside Uganda should be allowed to adopt under **Section 4(5) of the Act.** Counsel submitted that the **English Adoption Act (1950)** has restrictive Sections and the judgment **in Adoption Application No. 52/1951** gave a very narrow interpretation of "Residence" by holding that for adoption purposes a British working in a British Colonial Civil Service abroad resident in Nigeria was not a resident in Britain (actually the applicant and his wife were English and residence referred to residence in England). Counsel contended that the Learned Judge in the present case should not have based her decision on the English decision. As I have indicated, Byamugisha, J.., also cited three other decisions of the Uganda High Court to support her view of the Law. I should perhaps add that those decisions were really influenced by the same English decision in **Adoption Application 52/52,** itself a well reasoned judgment.

Counsel cited **Fox Vs. Strirk (1970) 3 All ER 7; Sinclair Vs. Sinclair (1967) 3 All ER 882** and a critique by **J.D. Mc Clean in** Vol**. 2 of the International and comparative Law**

Quarterly (19621 1153 (at page 1157) for the view that a person can have two residences and therefore that the appellants had residence in Uganda for the purposes of an Adoption Order under **S.4 (5)** and temporary residence in Austria where the couple worked.

With respect, I do not think that the provisions of the old British **Adopting Act 1950** which Harman J, interpreted in **Adoption Application No. 52/51** is materially much more restrictive in application than the Act. (See Section 4 and 5 of our Act) In view of the decision I have reached this point doesn't matter now.

It appears from the provisions of our Act and what Harman J., said about the **British Adoption Act 1950** that the concept of residence was put in both Acts so as to enable Court to have control or jurisdiction over Adoption Orders (see Section 5,6,7,13,) of our Act. I noticed that the restrictions imposed by subsections (2), (3) and (4) of Section 4 can be dispensed with by Court but the Court cannot dispense with the requirement of residence of either the applicant(s) or the Infant. It would appear therefore that inspite of the discretion given to Court by Section 5(b) of the Act to the effect that before making an Adoption Order the Court shall be satisfied that the Adoption Order will be for the welfare of the Infant, even if the Court is so satisfied (as was the case here) the Court still appears to have no discretion to dispense with the requirement of "Uganda residence". This appears to be reinforced by the contents of the statutory form of the petition, **(Form i in the Schedule to the Adoption of Children Rules).** There the applicants are required to state their place of residence in Uganda and the place of residence of the Infant in Uganda. The superficial view would therefore appear to be that the residence requirement is mandatory. If, Adoption Order should be made where such order is for the welfare of the Infant, why is the residence requirement so Stringent? Can it be argued that the legislature could have intended to make it difficult for Adoption Orders to be granted merely because of questioned residence qualification? Was even constructive residence not contemplated?

I agree that the word "resident" is not defined in the Act. But as the authorities cited by Mr. Babigumira show and as Harman J., also observe in **Adoption Application No. 52/51**. (Supra) "Resident" or "residence" is a matter of fact to be proved by evidence or to be inferred from the circumstances of each case. What may be residence for the purpose of one particular piece of legislation (e.g., Income Tax Law) may not necessarily be residence for the purpose of another piece of legislation such as Adoption of Children Act. In that regard and

with due respect I think that the guide lines by Lord Denning in **Fox Vs. Stirk (1970) ALL E ALL ER 7** need not be the only one to be used in courses under the current Adoption Act because the case of Fox concerned residence on a qualifying date for purposes of parliamentary elections under the **United Kingdom Representation of the People Act, 1949**. It is interesting to note that **Adoption Application No 52/51** was not referred to in the Fox's case I also note the deference in the use of the word "resident" in Section 4(5) of our Act and the words "normal resident" used in our **National Assembly (Election) Act** and "Ordinarily resides" in **Regulation 15 of the Resistance Councils And Committees (Elections, Regulations,) 1989.**

What is most remarkable in the **Adoption Application No. 52/51** is that Harman, J's decision reflects one view of the law opposite the views of some of his brother Judges. The judgment of Harman J, in Adoption cause No. 52/51 which has influenced a number of the recent decisions in the High Court has interesting passages which themselves reveal the difficulties experienced by some British Judges at the time. I find it pertinent to quote the passage some what at length. At pages 935 and 936 of the report, the Learned Judge expressed himself in his judgment as follows: -

"The Difficulty has really arisen out of the judgment of EVERSHED J., in Re W. (unreported). This was a considered judgment and it has given rise to the present position. In that case there was joint application by a Colonial Civil Servant and his wife to adopt a child. The applicants owned a house in England in which they live during the periods when they were home. There is, however, one difference between that case and the one now before me, in that in Re W. the wife intended to remain in England after the child was handed to her care, and not to return to Africa with her husband. It was, therefore, clear that on any view she was resident in this country and there was no objection to making, as the learned judge did make, an order in her favour. The real difficulty in that case was whether or not he could make an order in favour of the husband. It was argued that the husband had a home here, that for fiscal purposes he was resident here because, having a home available, he was resident here in any year he set foot in his country, according to the well- known ruling of the Income Tax Commissioners on that subject. The Learned Judge found himself unable to say that he resided here. After referring to the Income Tax decision, which I think he regarded as artificial, the learned judge said.

Am I construe (the Adoption of Children Act, 1926) residence in fact within the jurisdiction is referable to the power given to the Court to impose conditions on the making of an order as specified, for example, in 8.4 of the Act if 1926. I therefore come to the conclusion that I am unable to make an order in the male applicants favour."

He went on in these terms:

"When the male applicant returns to this country, the order can be varied and made in favour of both applicants."

I should take those words to mean that when the husband had finished his service abroad and returned to live permanently in this country, he would be qualified as a person resident here, **but I am told, a different view was taken by a judge in chambers, for, when the husband returned on leave in 1948, an order was made in his favour although he intended to go back to Africa shortly thereafter. As a result, apparently, of that case, a practice has grown up in the last two rears under which, for an adoption order to be made, it has been necessary only to find that the applicant was physically within the borders of the Country at the moment when the order was made.** On the other hand, even if his residence, his home, and his avocations were admittedly here, the order could not be made in his favour if he was out of the country on the morning when the Judge happened to be asked to make the order. Indeed, it was lately suggested to me that a university don, who had left the country for some two months to deliver some lecturers, was not a person qualified to have an order made in his favour, because he was not resident here at the time of the application for the order.

I cannot believe that any view which leads to such a conclusion is right. A more sensible meaning than that must be given to the word "resident." Counsel for the applicants suggests that it can be founded in the period of three months imposed by S.2(6) (a) of the Act of 1950 as the period during which the applicant must be here and in possession and charge of the child, aria that that is the kind of residence which is meant. He contends that it is enough if the applicant lives here for three months or so before the order is made because he is then resident here for the time being. Counsel for the infant

suggests that the applicant must no only be resident here, but must have no immediate intention of being resident elsewhere. It is a striking fact that a child which is adopted does not become a ward of court, nor is the court bound to make any conditions whatever about where the child shall reside in the future. Having satisfied itself that the adopters are suitable persons that they have the means and I suppose the accommodation, which is likely to lead to the child's advantage, the duty of the Court is finished. Counsel for the applicants contends that it does not in the least matter if the applicant goes abroad immediately after the order is made. As a matter of merits, of course, it matters very much. As a matter of jurisdiction, I think it does not matter. One must be able to postulate at the critical date that the applicant is "resident" and I think that that is a question of fact. "Resident" denoted some degree of permanence. It does not necessarily mean that the applicant has a home in his own, but it means that he has settled headquarters in this country. It seems to me dangerous to try to define what is "resident." It is very unfortunate that it is not possible to do so, but, in my Judgement the Court must ask itself in every case; is that applicant resident in this country? In the present case, when I asked myself that question in respect of the wife, I can only answer; "No. She is merely a sojourner here during a period of leave. Like her husband, she is resident in Nigeria where his duties are and whither she accompanies him, in pursuance of her wifely duties." I do not think the applicants in this case are residents in England at present, although they may be hereafter.

I much regret having to arrive at this conclusion, particularly in view of the fact that during the last two years three orders, I think, have been made on a footing which seems to be inconsistent with the judgment which I have just felt bound to deliver."

(Underlining supplied)

Two things are worth of note here. The Judgement shows that in the application of **Re W (1946)** (unreported), Evershed, J., eventually granted an order for adoption of the infant by a couple who worked in colonial administration in Africa and had a home in England where the couple returned to live during their vacation.

Secondly Harman, J's decision differed from three other orders (by his brother Judges) in which adoption was granted although the applicants were resident abroad and apparently returned home in circumstances similar to those of the appellants in the case before us.

Further it should be pointed out that unlike in Uganda, Adoption Acts in the UK have been amended many times since **Adoption Application 52/52** was decided particularly from **Adoption Act 1958** culminating in the **Adoption Act, 1976** which liberalized the law of adoption to include what are called "convention adoption orders" in which case residence in Britain is not a condition precedent to granting certain adoption orders. This shows we have remained static with English law of 1940's.

In view of the fact that the word "resident" has not been defined by Statute, I think that the question of "residence" for purposes of any Adoption Application should be found as a fact by the Court hearing the Application on the facts of each case. It is unhelpful to be too dogmatic about the concept of "resident other factors also matter.

Among authorities where the words "Resident" and "Residence" have been defined, Vol 4 of Strouds Judicial Dictionary of words and Phrases gives no less that 57 definitions. Thus is note 3(p, 2359) it states that:-

"Resident, has a variety of meanings according' to the Statute (or document in which it is used (per Erle C.J.). It is an ambiguous word" and may receive a different meaning according to the position in which it is found (per Cotton L.J, Re W. Bowie Exp. Bruell, 16 ChD.484.

Note 4 on the same page quotes Gibson, J., thus:-

"The word residence and place of abode are flexible and must be construed according to the object and intent of the particular legislation where they may be found. Primarily they mean the dwelling and HOME, where a man is supposed usually to live and sleep; they may also include a man's business abode, the place where he is to be found daily"; R vs. Fermangh Justice (1897) 2 I.R 563 **Adoption Application No.52/51** is there quote to illustrate: Residence in England as defined for purposes of **Adoption of Children Act. 1950** by Harman J., but as I have already stated there were by then three other decisions giving a contrary view. Those other decisions appear not to have been reported. But it is obvious that the view expressed by Harman, J, is with respect not the universal

interpretation though it is respected. Thus the Learned judges interpretation was criticised by J.D McClean (supra) at page 1157, et seq.

East Africa Courts have faced similar problems of construing the words “resident” or indeed “home”. See in **Parlington vs. Parlington (19) A 582 Commissioner General of Income Tax Vs. Noorani (1969) EA 685; Waseru vs. Kiromo (1969) EA 172 and Sir George Armoutoghi Vs. Commissioner of Income Tax (1967) EA 312.**

In **Noorani case** the East African Court of Appeal interpreted the word “home” for purposes of the payment of Income Tax and stated (P.686):-

> “ The question here is the meaning to be placed on the words “has a home in any of the Territories.” A “home” is not defined in the law and clearly must depend upon the peculiar circumstances and facts of each particular case. It is clear however, that a person can have more than one home in different countries, and then in my view “home” must mean a dwelling-house in the sense that it is a place in which one lives and for this purpose may only amount to a single room..

I also agree with the view expressed by the learned judge that “home” must be a place which, for at least a portion of the tax year, in question, was available to the tax payer, whether he was in this country or not, and was kept for the purpose of his use as a dwelling and was also a place over which he, at the particular time exercised full control.”

In my view the absence of the expressions “normally resident” or “ordinarily resident” or indeed “permanently resident” or “habitually resident” to S.4 **of the Act** opens construction of the word “Resident” to include “constructive residence.” That is the view i would adopt in this judgment. I do so because I am satisfied that the object of the Act is to promote the welfare of the Infant rather than to make it hard for prospective adopters to get Adoption Orders. In our present case the Infant has been under the care of the appellants since 3/2/89. The provisions of the Act should be interpreted liberally so as to enhance the benefit and protection of infants to be adopted and thereby give effect to the intention of the legislature. With modern means of communication and bearing in mind the practice of assisting members of our extended family in Uganda, I personally believe that many Ugandans who work

abroad are absent physically but are generally spiritually present in Uganda. I think that the appellants are for our purposes resident in Uganda and qualify to obtain the Adoption Order.

Accordingly I would allow this appeal. I would set aside the order of the Trial Judge and in its place I would substitute an order allowing the appellants to adopt the Infant

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In his submissions, Mr. Babigumira asked us to "allow adoption with Petitioners' costs." The memorandum of appeal did not raise the issue of Costs. The petition had indicated that the petitioners would pay the Costs of the petition.

I would have ordered for the Costs of the appeal to be paid out of Public Funds if a proper case had been made out during the hearing. In some Countries where Adoption Agencies or Societies exist, such costs would be paid by such Agencies or Societies. In this case I would concur with the order of the Learned Deputy Chief Justice that the appellants bear the Costs of the Appeal.

Dated at Mengo this 3rd day of May, 1995.

J.W.N.TSEKOOKO,

JUST ICE OF THE SUPREME COURT.

I CERTIFY THAT THIS A TRUE COPY OF THE ORIGINAL.

E.K.E.TURYAMUBONA,

DEPUTY REGISTRAR,THE SUPREME COURT