

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT JINJA**

**MISCELLANEOUS CAUSE NO. 22 OF 2019**

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**IN THE MATTER OF THE CHILDREN ACT CAP 59 AS AMMENDED BY  
THE ACT OF 2016**

**AND**

10 **IN THE MATTER OF A PETITION FOR THE ADOPTION OF REHEMA  
NAIGAGA AND ANGEL NAMUSUBO (CHILDREN) BY PETROS  
LUTRAS AND AIKATERINI ZISIMOPOULOU**

**RULING**

**BEFORE: HON. LADY JUSTICE EVA K.LUSWATA**

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**Introduction:**

**PETROS KOUTRAS AND AIKATERINI ZISIMOUPOLOU** the petitioners filed this petition through Shonubi Musoke &Co., Advocates& Solicitors seeking an order to adopt **REHEMA NAIGAGA AND ANGEL NAMUSUBO** (hereinafter collectively referred to as the children). The application was filed under the Children Act as amended by the Act of 2016 (hereinafter referred to as the Act).

Both petitioners filed affidavits in support of the application with supporting documents. Additional affidavits were filed by Babirye Eseza and Kyakulaga Godfrey the children's maternal and paternal grandparents respectively, Nabirye Janet, maternal aunt of Namusubo, Ssembatya George William an LCI chairperson of Wanjeyo Kalagala Kito LCI, and Mwima Yusuf Bule one of the first persons to know Naigaga. In addition, Shiundu Mukulya John the director of M/s Kidron Children's Home, a community based organization based in Naminya Village,

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Buikwe District, registered by the Ministry of Gender Labour and Social Development (MGLSD) and licensed to provide care to vulnerable children (hereinafter referred to as the Home) also filed an affidavit (The affidavits collectively gave the antecedents of the petitioners, the children's background, recommendations from various authorities and persons and other relevant information. The petitioners counsel in addition filed detailed written submissions and provided useful authorities. The contents the affidavits and submissions although not reproduced here, will be considered in my ruling.

10 In addition to the pleadings, on 20/5/19, the court met and interviewed the petitioners and some of their witnesses and was able to see the children who are the subject of this application. The statements made given during those interviews shall also be considered in my ruling.

15 It is stated briefly in the petition that the petitioners are aged 53 and 31 years respectively. They were legally married on 23/9/2017 and have no biological children. They are normally resident at 5A Aisxylou Street, Artemida Attikis, Greece. The 1<sup>st</sup>petitioner is gainfully employed as a General Manager at Medisana Gellas Ltd a company dealing in health control and wellbeing devises. The 2<sup>nd</sup> 20 petitioner is a manager of a hotel called *Maison De Couleurs* but informed Court she will be leaving that job in September 2019, to become a full time home maker and mother. The petitioners have fostered the children since 16/4/2019 and now wish to obtain a formal adoption order whose conditions they are prepared to comply with.

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I was able to gather from the supporting documents that: -

- (a) The child **REHEMA NAIGAGA** (hereinafter called Naigaga) is of the female sex and her exact age is unknown

(b) Is a citizen of Uganda

(c) Her biological parents are unknown since she was found abandoned while still an infant

5 (d) On the other hand, the child **ANGEL NAMUSUBO** (hereinafter called Namusubo) is also of the female sex born to one Slyvia Naggudi on 25/6/2018, the latter who is severely physically handicapped being both deaf and dumb.

(e) Her father is unknown

(f) Is a citizen of Uganda

10 (g) Was in her early years cared for by her maternal grandmother, Babirye Eseza

Both children who have not been the subject of an adoption order or an application or petition for an adoption order, were for some time under the care of the Home. 15 Although applications were filed, the Home was unable to secure Care Orders for either child due to the busy schedule of the duty Magistrate. Both children are under foster care of the petitioners vide a foster care certificate issued by the Probation and Social Welfare Officer of Buikwe District (hereinafter referred to as PSWO) on 16/4/2019, but in their absence, the children remain in de facto custody 20 of the Home..

It was stated by Ms Babirye Eseza in her affidavit in support of the petition that, she is the maternal grandmother of Namusubo who was born to her second child Naggudi who is now aged 20 years. Namusubo was conceived when Naggudi was 25 still a teenager and against her will. Babirye suspected a man she only knew as Waswa to have defiled Naggudi, a matter which was reported to Nakifuma Police Post and recorded as SD 25/13/11/2017. As part of police investigations into the crime, Naggudi was subjected to a medical examination and confirmed to be three

months pregnant. Still under the care of Babirye, she was delivered of a healthy baby girl on 25/6/18 whom Babirye named Angel. Owing to her severe disabilities, especially being hearing impaired, Naggudi could not adequately care for Namusubo, and as a result, Babirye became the primary care giver for both  
5 Naggudi and Namusubo.

Being financially and socially constrained and because she had six other biological children to care for, during February 2019, Babirye sought the assistance of local authority personnel and the Nakifuma police for an organization that would  
10 support both Naggudi and Namusubo. With reference given by the PSWO, on 15/2/19, Namusubo was placed under temporary custody of the Home where they have remained until when they were placed under foster care of the petitioners. Much of that narration was supported by Ssembatya, the LCI Chairperson of Wanjeyo Kalagala Kito Local Council in Kimenyedde Sub County, who was  
15 mentioned as one of the people who supported Babirye to locate the Home and have the child admitted.

On the other hand, Shindu Mukuya John, the director of the Home stated that the child Rehema Naigaga was found abandoned in a sugar cane plantation at  
20 Namalere South, Buwenge Jinja District on 12/4/18. That the matter was reported to the Nakifuma Police Station under CFPU 25/12/04/2018 by Mwine Moses and Mwima Yusufu Bule both residents of Namalere Buwenge, Jinja District. Mwima provided temporary custody for the child for two weeks and then handed her over to M/s Shared Home, a community based organization located in Mpumude,  
25 Buwenge in Jinja District where the child was cared for until that Home was closed in February 2019. The child was then placed with the Home where she has lived until the petitioners were appointed her foster parents. That prior to and after the child was placed at the Home, attempts were made to trace Naigaga's biological

parents and/or relatives in vain. Further that Naigaga was subjected to successive medical examination and found to have asthmatic symptoms of frequent cough and wheezing especially at night.

5 Mwima Yusuf Bule, one of the people who found Naigaga confirmed that it is him and Mwine Yusuf who picked her up and that she remained in his custody for two weeks during which time he named her ‘Rehema’. That the name ‘Naigaga’ was given to her at the Shared Home. Shidu Mukuya gave further information and particulars with respect to both children’s admission into the Home and the  
10 attempts to locate Naigaga’s father in vain. He also explained how the petitioners came to know and were matched with the children, as well as his involvement in the fostering period.

### **The Law:**

15 It is provided in Section 3 of the Children (Amendment) Act that;

*“(1) The welfare of the child shall be of paramount consideration whenever the state, a court, a tribunal, a local authority or any person determines any question in respect to the upbringing of a child, the administration of a child’s property, or the application  
20 of any income arising from that administration.*

I believe the two crucial points to note of our current law is that under all circumstances, the welfare of the child shall be paramount before any consideration is made by this court to allow an adoption. See for example **Payne vs. Payne (2001) EWCA 166** and **B vs. B (1940) CH 54**. This principle has been  
25 well followed by our courts. See for example **Deborah Alitubeera Civil Appeal No. 70/2011** and **Re AM Adoption Cause No. 12/2017**. The term ‘welfare’ has

not been defined in the Act or other laws. An attempt was made to define the term by the Court in **JVC AC 668**. It was held that:-

5       “... more than that, the child’s welfare is to be treated as the top item in a list of items relevant to a matter in question. (Welfare) connotes a process 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 interests of the child.

10       Secondly, inter-country adoption or specifically, a non-citizen of Uganda is allowed to adopt only in exceptional circumstances and even then, only if they fulfill the conditions under Section 46 of the Act (as amended) which provides that: -

15       “(1) A person who is not a citizen of Uganda may in exceptional circumstances adopt a Ugandan child, if he or she –

- 20       (a) Has stayed in Uganda for at least one year;
- (b) Has fostered the child for at least one year under the supervision of the 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 officer of other competent authority; and
- (e) Has satisfied the court that his or her country of origin will respect and recognize the adoption order.

25       Even then, under Section 46(4) of the Act, my Court has powers in exceptional circumstances to waive any of the requirements mentioned above.

Our law does not define exceptional circumstances. In my view, they would be or amount to unusual, extraordinary or not typical circumstances surrounding the upbringing or commonly associated with the upbringing of a child. Of course, the court should consider these to be dependent on the circumstances of each individual case.

A new addition to the law appears in Section 46 (5) of the Amendment Act by which certain persons are now permitted to give information that would assist courts to determine that the best interests of the child are protected. These include advocates, probation and social welfare officers or a guardian *ad litem* for the children. That list may not be exhaustive and the court may, depending on the circumstances presented, invite information from other sources.

Further in Section 46 (6) & (7) of the Act, adoption should be the last recourse for children and the court is enjoined to consider a continuum of comprehensive child welfare services before international adoption. These would include a broad range of services and community based family centered alternative care options which may either be family preservation, kinship care, foster care or, institutionalization.

**Do the petitioners qualify to be adoptive parents?**

According to the 2<sup>nd</sup> petitioner, although she and the 1<sup>st</sup> petitioner had no medical issues concerning their fertility, they tried for a child in vain. They opted not to use IVF fertilization and instead felt more inclined to create a family through adoption. That they are both family oriented people and desire to love and nature children.

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I have enumerated the conditions preceding an adoption which the petitioners must fulfill before they can be considered as suitable adoptive parents.

Naigaga's age was not given and it is not clear in any of the affidavits what her approximate age was at the time she was discovered by Mwine Yusufu and Mwima Bule. However, it is shown in a medical report from the Mulago National Referral Hospital that in April 2019, she was three years old. This would make  
5 both petitioners 21 years older than the children. They have no criminal record both in their home country and in Uganda. They have in addition received suitable recommendations from the mandated authorities in Greece and Uganda.

According to a certificate of approval issued by the President of the Board of the  
10 International Social Service of Greece (Hellenic Branch) of Greece on 19/2/19, (hereinafter referred to as the Board), the petitioners have fulfilled all the necessary prerequisites and criteria for adoption of two children. It is also confirmed that upon completion of the adoption, the children will gain Greek residency and nationality and can reside in Greece with the petitioners. I shall return to the  
15 contents of this and other reports issued by PSWO later in this ruling.

Both applicants have not lived in Uganda for a continuous period of one year. It is therefore certain that they have carried out their fostering duties out of Uganda. The requirement in our law to reside and foster children in Uganda cannot be  
20 underestimated or regarded as a mere inconvenience to prospective adoptive parents. I did hold in my decision in **Adoption Causes Nos. 16 & 17/2018 In the Matter of Katumba Frances and Nakitende Aisha**, that, the fostering period gives the foster parents and the children the opportunity to form a close relationship which can be recognized at law. I continued that the requirement for  
25 prospective adoptive parents to have stayed in Uganda for a one year period, was meant to ensure that they acclimatize to the culture and way of life of the children so that they are able to be well informed in order to prepare the children for the life to which they are destined. I still hold the same view.



I am happy to be speaking to petitioners from a country with a rich history, culture and civilization that is globally renowned and dates back thousands of years. I note that both petitioners have hardly resided in Uganda and only came to know about possibilities of adoption here through the internet and international adoption organizations. It is doubtful that they have any grounded knowledge of the culture and way of life of these children which is vital if they are to become parents well equipped in their new role. I have confirmed from their home study report that these are some of the issues for which they were instructed as they made preparations for this adoption. The petitioners therefore must advance very compelling reasons to persuade the court to waive this requirement under Section 46 of the Act, which is in my discretion to do.

Both petitioners are residents of the Hellenic Republic of Greece. The 1<sup>st</sup> petitioner is in full time employment, and the 2<sup>nd</sup> petitioner, is preparing to become a stay home mother, and if this application is allowed, she will have the primary role of taking care these children. During my interface with the petitioners on 20/5/19, the 1<sup>st</sup> petitioner stated that they were fully aware of the requirements of inter country adoption. Their intention had been for him to stay in Uganda for at least 45 days, and the 2<sup>nd</sup> petitioner, for a longer of period of three months or more. The purpose of their stay would be to meet the children, get to know and bond with them as they fostered them in accordance with the law. The 2<sup>nd</sup> petitioner confirmed that arrangement adding that she would have had to return to Greece after three months and wrap up her job there and then return to continue with the fostering in Uganda.

According to the petitioners, their plans were put in disarray upon discovery of Naigaga's illness. Mukuya, stated that while still at the home, Naigaga suffered recurrent respiratory complications for which she received constant medication.

Once appointed foster parents, the petitioners subjected her to further assessment and on 24/4/19, she was diagnosed with congenital heart disease with *perimembranous VSD* and PFO. The pediatric cardiologist in Mulago Hospital advised further investigation and treatment in a more equipped hospital. The  
5 petitioners then shared Naigaga's diagnosis reports with Dr. Dimitrios Bobos, a cardiovascular surgeon of the Onassis Cardiac Surgery Centre of Athens, who confirmed his ability to treat her.

Both the medical reports from Mulago and Greece dated 24/4/2019 and 8/5/2019  
10 respectively, confirmed the petitioner's statements. It is not indicated that the matter is one of urgency or even life threatening. I was therefore surprised by the detailed account given by counsel in an attempt to explain the extent of the illness and its consequences. They are by no means experts on cardiovascular illness or other medical condition for that matter. However, in the Mulago report, it is  
15 advised that Naigaga would require an open heart surgery, which in my mind is a serious mode of treatment; her defect must be proportionately serious and being a child of tender years, the earliest intervention would be the best. Expecting this couple to remain in Uganda and wait out the fostering period, may be harmful to her welfare and thus not in the spirit of the Act. Namusubo was reported to have  
20 audio disabilities which are not life threatening but expensive to treat in Uganda. The petitioners who claim to have the means (through health insurance) can take advantage of this waiver to have her immediately treated in Greece as well.

Under such circumstances I am prepared to to waive the requirement that the  
25 petitioners should have resided in Uganda for a continuous period of one year, prior to filing the application.

## **Issue 2 – Whether the application is in the best interests of the children**

The significance of the welfare principle has previously been emphasized in my ruling. According to Section 3(3) of the Act, it would entail giving regard to;

5                   (a) *The ascertainable wishes and feelings of the child concerned considered in the light of his or her age or understanding.*

                  (b) *The child's physical, emotional and education needs;*

                  (c) *The child's age, sex, background and any other circumstances relevant in the matter.*

                  (d) *Any harm that the child has suffered or is at risk of suffering*

10                  (e) *Where relevant the capacity of the child's parents, guardians or others involved in the care of the child in meeting his or her needs.*

The strong and accepted evidence is that Naigaga was found abandoned in sugar  
15   plantation when very young and vulnerable. A good Samaritan kept her until she  
was handed over to the first home and eventually to the Home. I am persuaded that  
efforts to locate her biological parents or living relatives were serious and wide.  
According to Mukuya, both Mwima Bule and the police at Bwenge confirmed that  
no one ever claimed the child before she was handed over to M/s Shared Home. In  
20   fact, it was Bule who gave the child a name and thus her first identity. Under such  
circumstances, Naigaga would be destined to spend the rest of her days as a minor  
in institutional care. Her situation is exacerbated by the fact that she requires  
expensive medical attention to sustain her life. No institution would have the  
resources to support her operation and even if they did, the specialists at the  
25   Mulago referral hospital, currently one of the best facilities, have recommended  
that the operation be carried out abroad. She will require close attention and  
monitoring as she recuperates in a loving family that has her interests at heart.

Namusubo's situation is not any better. Her grandmother Babirye of Nakifuma Wangeyo Village gave a detailed account of her conception and early life which has been full of strife and deprivation. It was confirmed that her conception was a result of a defilement reported and investigated at the Nakifuma police station. It was confirmed that the one suspected to be her father was never apprehended and has never come up to claim her. Naggudi her mother is a certified deaf mute who due to her young age and disability, could not care for the child. Worse still, owing probably to the nature of the child's conception, Naggudi totally rejected the child and the role of nurturer was left to Babirye.

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Babirye explained that she was happy to bring up the child but was constrained both socially and financially. That in addition to caring for Namusubo and two other nieces, she is a 40 year old mother of seven children with virtually no spousal support. She owns no land and is a squatter on a small plot of land on which she has a two roomed mud thatched house and grows food. She irks out a life from of tilling other people's gardens for which she earns an average of about Shs. 80,000 a month (approx.20 Euros). She was thus unable to provide the child necessities of life, including regular meals. Carrying for the child also became physically impossible because she had to carry her to work everyday. She was for that reason constrained to give her up into institutional care. She too would be destined for institutional care for the better part of her life.

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Nabirye's initial desire was for Namusubo to be placed into a loving family. However, initially, the Home was the only option open to her. Once Babirye learnt about the petitioners' wishes, she gave her full consent to the adoption. She indicated that she has observed the petitioner interact with Namusubo and witnessed how much they adore her. She concluded that they would be better parents than Naguddi who has been very detached from Namusubo since birth. She

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explained that Naguddi has been fully appraised of the situation. She is able to communicate with her through a devised sign language (that she referred to as “local signs”) that she has used as a mode of communication between them since Naguddi was a child. She confirmed that Naguddi had no objection to the adoption.

5 Namusubo’s other relatives and previous careers have equally given their consents for the adoption.

It has previously been stated by our Courts that institutionalization of children should be the last option. Even with the help they were getting at the Home, these  
10 two girls need to be placed into a loving family so that their upbringing, good health and education are well catered for. They are suitable candidates for adoption and an adoption will with no doubt, be in their interest.

**Whether the petitioners are suitable candidates for adoption of these children.**

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Both applicants presented as two people committed to take on the responsibility of a new member in their family, one who is faced with serious medical complications. The 1<sup>st</sup> petitioner is holding a good job with a multinational company. The 2<sup>nd</sup> petitioner is making preparations to become a full time stay  
20 home parent which will ensure that the children receive round the clock care. They have a shared annual income of about Eur 35,500, state and private insurance schemes and a right to pension. In particular, they own the property in which they reside, and in addition, own real estate in different parts of Greece from which they earn rental income. Their home is a spacious house in a quiet neighborhood with  
25 all the necessary services like schools, clinics, cafes, markets etc. nearby. The petitioners are fully committed to meet all of Naigaga’s medical bills and care to recovery. I am satisfied that the petitioners collectively have the financial means to meet most of the children’s needs as set out in the Constitution and the Act.

Both petitioners have filed documentation from Greece and Uganda confirming that they have no criminal history and are in good physical and mental health with no history of alcohol, substance or child abuse. They profess to be Christian  
5 Orthodox, a religion under which they intend to bring up the children.

In addition, the petitioners have obtained the statutory recommendations from the Board, confirming their suitability as adoptive parents of two minor females. They were subjected to an evaluation by a senior social worker certified by the Board,  
10 upon the request of the Consulate of Uganda in Athens. A summary of the home study report is that through three individual sessions it was confirmed that the petitioners view adoption as a principle in very high esteem and are prepared to adjust their lives in order to adopt. They have in addition received adequate training and counseling in matters of international adoption in preparation of their  
15 expected new roles. They are both compassionate, protective, organized, and analytical with high ethical codes, and values which that they will inculcate in the children. They are interested in tracing the children's roots and understand that they must know and be proud of their country. They are prepared to be supervised by the Board and file reports with the relevant office in Uganda, in line with the  
20 law of Greece. The latter should be a welcome safe guard to ensure that the children's progress and wellbeing is monitored back here, so that there is early warning if the children are facing any harm.

In addition, the petitioners filed a report of the PSWO who stated that she  
25 investigated the histories and background of the children and also interviewed the petitioners at length before allowing them to foster the children on 16/4/2019. It is not clear what form or for what period her interviews took but they must have been for a short period for as the petitioners conceded in Court, they came to Uganda on

16/4/19 and had to travel back for the 1<sup>st</sup> petitioner to see a doctor. That notwithstanding, the PSWO did observe that the petitioners care for the children and have bonded with them with a serious commitment towards being adoptive parents. She recommended the adoption to be in the best interests of the children's welfare. The petitioners also presented positive recommendations from other friends and relatives.

I am persuaded that the home study report filed by the petitioners gave a detailed account of their overall suitability as parents. The law requires that the petitioners in addition submit themselves to the probation officer in Uganda, in charge of the area in which the children reside. They have done so, but I find the report quite shallow on detail of their capabilities from her expert eye. This may be so because of the limited time they have had in Uganda. That said, this Court still needs to be satisfied that the petitioners have at least received reasonable supervision here. Further, the petitioners did express in the Home Study report and in court, that they are very interested in tracing the children's roots and ensuring that the children know and appreciate those roots. Indeed they had intended to do so, before Naigaga was confirmed ill. In my view, they can do so if them and the children reside here in Uganda for a suitable period, so that they obtain a meaningful interaction with the children's' traditional and every day way of life. Doing so, should prepare the children as well as the petitioners for the life for which they are destined, a culture and way of life very different from that in Uganda. I am enjoyed by Section 3 of the Act (as amended) to make such orders that are in the best interests of these children. This of course does not discredit the other credentials of the petitioners and for that reason, adequate provision will be made in my final decision.

### **Conclusion**

In conclusion, it is evident that the facts of this case present exceptional circumstances to permit non-citizens to adopt the children concerned. By their proven capabilities, experiences and reliable positive references, the petitioners qualify to be appointed the adoptive parents of the children and I would  
5 accordingly allow the application and order as follows: -

1. The petitioners Petros Koutras and Aikaterini Zisimopoulous are granted an order of adoption in respect of the children **REHEMA NAIGAGA** and **ANGEL NAMUSUBO**
- 10 2. The petitioners may travel with the children to Greece or any other country they may choose as residence in order to fulfill their obligations as adoptive parents.
3. I direct that the Registrar of Births and Deaths makes an entry recording this adoption order in the Adopted Children Register.
- 15 4. It is further directed that this adoption order be furnished to the consular department in the Ministry of Foreign Affairs at Kampala and at the Ministry of Gender, Labour and Social Development in Kampala.
5. The petitioners (either jointly or either of them) are directed to return and reside with both children in Uganda (preferably within Nakifuma, Mukono  
20 District or Naminya in Buikwe District) for a continuous period of **not less than four months**. This order shall take effect **WITHIN TWO YEARS** immediately after the date of the Adoption Order.
6. The petitioners shall file with the Registrar of this Court and the Ministry of Gender, Labour and Social Development in Kampala, once every three  
25 years, a report on the progress of the children. During their stay in Uganda, they shall subject themselves to supervision of the Probation and Social Welfare Officer, Buikwe District, who will file the report to the named institutions.



7. The petitioners shall meet the costs of this application.

I so order.

5 Signed

**EVA K. LUSWATA**

**JUDGE**

**08/07/2019**

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