

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
ADOPTION CAUSE NO. 16 OF 1993

IN THE MATTER OF ADOPTION OF CHILDREN ACT (CAP 217)
IN THE MATTER OF IRENE SARAH KIRABO-BUKIRWA (AN INFANT)

BEFORE: The Honourable Ag. Justice M. Kireju.

RULING

This is an adoption petition alledgedly filed by Joyce Mukasa of 5th Ngongo Avenue, TIVA A&B flats No. 6A of P.O. Box 30030, Nairobi Kenya, she seeks to adopt Irene Sarah Kirabo Bukirwa a minor. At the hearing of the petition learned counsel Ms Luswata of M/S Mulira and Co. Advocates presented the petition. The petitioner did not appear in person she swore an affidavit clarifying her absence as she was traveling to Croatia on duty. I dispensed with the presence of the petitioner as rule 3 of Adoption of Children rules 3.1 No. 216-I which allows the petition to be presented by the petitioner or an advocate.

Before going into the merits of the case I perused the petition to Find out whether it was filed in conformity with the Adoption of Children' s Act Cap 216 and the rules made there under. The petition was signed or filed by m/S Mulira & Company Advocates counsel for the petitioner. I did not find any good reason why the petitioner did not sign her petition. although rule 3 allows an advocate to present the petition in court I do not think that he/she should sign the petition on behalf of the petitioner although this may not be fatal to the application if other rules are complied with.

Rule 7 is as follows

“The statement contained in the petition shall be verified by affidavit .there shall be exhibited to the affidavit all certificates and other documents proper for proving the allegation in the petition.”

In this petition the petitioner should have put forward documents to verify her citizenship for example a certified copy of her Ugandan passport a letter from her employer stating that she is actually employed by United Nations Commission for Human Settlements in Nairobi, death certificates of the parents of the child or any other document to show that the parents are dead. The birth certificate of the child although not mentioned in the affidavit of the petitioner it was exhibited in court and I accepted.

I now turn to the affidavit dated 20/5/1993. This affidavit although it refers to some of the matters mentioned in the petition it really is not an affidavit verifying the statements in the petition. As I have stated above the relevant certificates and documents were not exhibited as required under rule 7 cited above. The deponent Joyce Mukasa swore as follows in paragraph 7 of the affidavit;

That this affidavit is made to clarify my disability to travel to Uganda in support of my application to dispense with my physical appearance at the hearing of the petition.”

It therefore follows that the affidavit was not intended to verify the statements in the petition but to justify the petitioner's non appearance at the hearing.

I am fortified by the fact that affidavit which would have supported or verified the Petition was dated 20/5/1993 whereas which would have been drawn before or at the same time it was dated 17/6/1993.

I have therefore found this petition to be incompetent and bad in law as it does not comply with the rules. It is accordingly struck out. I did not find it necessary to go into the merits of the application. The petitioner is free to bring a proper application which complies with the law.

Costs to be borne by the petitioner.

M. Kireju

JUDGE

7/1/1994