

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA**

FAMILY CAUSE NO. 035 OF 2008

**IN THE MATTER OF SALEM MUKIIBI AND ASAFU SSEMAKULA OF BUZIGA
VILLAGE, MAKINDYE DIVISION (INFANTS)**

AND

**IN THE MATTER OF A PETITION BY OLIVIA NAKAWUNGU HOFFMAN AND
HOFFMAN EDWARD**

BEFORE: HON. LADY JUSTICE MARGARET C. OGULI OUMO

RULING:

The petitioners bring this petition under the Children Act Cap 59, seeking to be appointed adoptive parents of the infants, Salem Mukiibi and Asafu Semakula.

The first petitioner is a citizen of Uganda, resident in the US and attached is a copy of her American Residence Certificate marked as "A". The second petitioner is an American citizen.

The first and Second Petitioners are married. Attached is a copy of their certificates of Customary and Church Marriage marked as Annexure 'B' and 'C'.

The first petitioner is 31 years old and the second petitioner is 61 years old.

The infants are 14 years old and 11 years old respectively, copies of their birth certificates are attached on the file.

The first Petitioner is a stepsister of the infants, sharing a mother, Imelda Namutebi.

Under section 45(1) (a), an adoption order may be made jointly to spouses where;

(a) the applicants or at least one of the joint applicants has attained the age of twenty five years and is at least twenty one years older than the child;

In the present case, the second applicant is 61 years of age and therefore fulfils the age requirement and is 47 and 50 years older than the children.

The application shall not be considered unless the applicant has fostered the child for not less than 36 months under the supervision of a Probation and Social welfare Officer.

See Section 46(1) (b) of the Children Act Cap 59.

Counsel for the petitioners, Mr. Kandebe Ntambireki, submitted that, the petitioners have fostered the children since the 21st October, 2005, a period of 4 years under the supervision of the Probation and Social Welfare Officer. See: Annexure 'D' — the guardianship order granted by this court.

Since the second petitioner is not a Ugandan citizen, we shall therefore consider whether the second applicant fulfils the requirements under section 46 of the Children Act.

Under section 46(1) the court may in exceptional circumstances, adopt a Ugandan child, if he or she:-

- a) Has stayed in Uganda for at least three years;
- b) Has fostered the child for at least thirty six months under the supervision of a Probation and Social Welfare Officer;
- c) Does not have a criminal record;
- d) Has a recommendation from his or her country's Probation and Social Welfare Officer or other competent authority, concerning his or her suitability to adopt.
- e) Has satisfied court that his or her country of origin will respect and recognize the adoption order.

In the instant case, the second applicant is married to the first applicant, a Ugandan, permanently resident in the USA, who is the stepsister of the two infants.

The applicants have fostered the children for 4 years after they were granted guardianship order by this court in 2005.

There is no evidence that the applicants have a criminal record in fact the first applicant has a criminal clearance record on the court file.

The petitioners have 2 children, one biological child, Joshua Hoffman, 5 years and Jonathan Hoffman, 24 years, a son of the second applicant from a previous marriage.

Counsel for the petitioner submitted that the children have been accepted as residents in the United States of America and will not be denied visas to stay.

In view of the above, court is of the view that exceptional circumstances exist under section 46 of the Act for the court to exercise its discretion to grant the adoption order to the applicants, even if the second applicant is a citizen of the United States of America.

Under section 47 (1) of the Children Act, the consent of the parents, if known is necessary for the adoption order to be made. The mother of the children, Imelda Namutebi has consented to the application and the father one Mike Mutyaba is deceased.

Counsel for the applicants submitted that he has explained to the applicants the implications of section 51 of the Children Act. That, this is why they are applying for adoption unlike guardianship which they had already been granted by this court.

Consequently, court is of the view that the applicants have fulfilled the requirements of the law under sections 45, 46, 47 and 51 of the Children Act and the application should be allowed in the following terms and conditions:

1. The petitions are appointed adoptive parents of the infants, Salem Mukiibi and Asafu Semakula with full parental rights and responsibilities.
2. The petitioners are directed to register the order with the Registrar of Documents Uganda Registration Services Bureau, Ministry of Justice and Constitutional Affairs, Kampala.

3. The petitioners are directed to register the order with the United States embassy in Kampala, and the Ugandan embassy in Washington.
4. The petitioners are directed to register the order with the authority responsible for children in Iowa State — USA and to file a report once every year to the Registrar, Family Division of the High Court of Uganda, Kampala regarding the state of the welfare of the children, until they are 18 years of age or until directed otherwise.
5. The court makes no orders as to cost.

Margaret C. Oguli Oumo

JUDGE

19/10/09

Present:

1. Counsel for the petitioners
2. The petitioners
3. Nalongo Nandawula — Court Clerk
4. Nyakwebara Elizabeth — Research Assistant.