

**THE REPUBLIC OF UGANDA**  
**IN HIGH COURT OF UGANDA HOLDEN AT KAMPALA**  
**ADOPTION CAUSE NO. 144 OF 2009**  
**IN THE MATTER OF THE CHILDREN ACT CAP 59**  
**AND**  
**IN THE MATTER SHARON ASIGE (AN INFANT)**  
**BEFORE: HON. LADY JUSTICE MARGARET C. OGULI OUMO**

**RULING:**

The Petitioners, Ronald Gloetzner and Carol Gloetzner, are American citizens and a married couple – see copy of their Marriage Certificate on the court file attached as Annexure ‘C’. Ronald Gloetzner is 59 years of age, having been born on 14<sup>th</sup> July, 1950 and Carol Gloetzner, is 54 years old having been born on the 2<sup>nd</sup> May, 1955. See copies of their passports attached as Annexures “A” and “B”.

The infant, the subject of the Adoption order is a 7 year old citizen of Uganda and a total orphan, having lost both parents when she was of tender age – see Annexure ‘H’, report of the Probation and Social Welfare Services.

The child is currently under the care of a paternal uncle, Pastor Richard Osire and his wife at Buziga. The petitioners got in contact with the child during their missionary visit to Uganda in 2006. The petitioners have seven biological children of their own.

The first applicant is a social worker who is self employed as a licensed contractor with a monthly income of U\$ 4,300. The second petitioner is a graduate at Michigan with a High School Diploma and has enjoyed being a home maker for several years. Previous employment includes managing a group home for adolescent girls as well as being a licensed foster parent in Michigan.

The petitioners were granted a foster care order over the child in 2006. See copy of the Foster Care Order attached as Annexure 'A' to their joint affidavit dated 8<sup>th</sup> March, 2009.

At the hearing of the petition, the petitioners were represented by Mr. Omoding.

Under section 45(1)(a) of the Children Act, the petitioners or one of them has to be at least 25 years and 21 years older than the infant. In the instant case, the petitioners are 59 and 54 years of age, and the child is 7 years old.

In view of the above, it is clear that the petitioners are over 25 years of age and 21 years older than the child and therefore fulfill the requirement for Adopters.

Under section 45(1)(b), the child has to be under the care of the petitioners for at least 36 months, under the supervision of a Probation and Social Welfare Officer.

In the instant case, the both parents of the child are dead – see their Death Certificates attached as Annexure 'G1' and 'G2', on the court file. The child has been under the care of Pastor Richard Osire of Saints Gate Cathedral, Gaba, since 2005 and the petitioners as foster parents have been providing the child's support and maintenance. The child knows the petitioners' family well and has been communicating with them regularly. She is in good health and so are the petitioners.

In the instant case, the Probation and Social Welfare Officer, Makindye Division, Mr. Bukenya Patrick stated in his report that the petitioners have successfully completed the fostering process without the child's welfare being abused and he is fully satisfied that they are suitable adoptive parents for the child.

The petitioners are American citizens and we shall examine whether they fulfill the requirements for the Intercountry adoption provided in the Children Act, section 46.

Section 46 provides that the court may in exceptional circumstances grant an adoption order to a non citizen, where he or she-

- a) has lived in Uganda for at least three years.

- b) fostered the child for at least 36 months under the supervision of the Probation and social welfare Officer.
- c) has no criminal record.
- d) has a recommendation from his country's Probation and Welfare Officer regarding his or her suitability to adopt.
- e) her country of origin will accept and respect the adoption order issued by the court.

Counsel for the petitioners submitted that bearing in mind the welfare principle, it will be in the best interest of the infant that this court be pleased to grant an order for adoption.

Mr. Omoding contended that exceptional circumstances existed in this case and are that the child is an orphan, the petitioners have provided foster care for the child as per attached Probation report, that although they have not been resident in Uganda for at least 3 years, have been resident in Uganda for 26 months at Kambere, since 2006 and during this period they have provided and fostered the child.

Counsel Omoding argued that in the case of *In Adoption Cause No In the Matter of the Children Act Cap 50 and in The Matter of Paula Robertson and Cynthia June Robertson, an infant, Adoption Cause No. 31/2004*, the court held that the Provisions in S.46 of the Children Act are not mandatory on account of the reason that the welfare principle, in section 3 of the Children Act is paramount; he also cited the case of – *In the matter of J.N (an infant) Civil appeal No. 22/94*, where the application had not be granted because of non proof of residence. Court allowed the appeal and that Odoki CJ in his ruling stated that, in adoption proceedings as in matters relating to children, the guiding principle is the welfare of the child and the appeal was granted and *In The matter of Michael Benjamin Pietsch and In The Matter of An Application for Adoption by Christopher John Pietsch and Sharon Pietsch– Family Cause No. 102/08* – Justice Egonda Ntende, held that although the petitioners have not been resident for all 3 years, but court gave a liberal interpretation of S.46 of the Children Act while considering the circumstances of the case and that interests of the child, were paramount.

Mr. Omoding submitted that though they have not been resident in Uganda for 3 years, they have nevertheless shown that they are able to provide the child with a home where she has an

opportunity to grow up and realize her full potential in life and that this is a situation where the court can exercise its discretion to grant the order sought.

In the instant case, the petitioners came to Uganda in 2006 and met the child who had already been in the hands of Pastor Osire for one year, took out a foster care order for her in the same year, March, 2006, (a period of 36 months has elapsed since then even though they were not physically resident in Uganda all that time) and they have been providing for her needs and education and connecting with her regularly together with the rest of the other family members. The Probation and Social Welfare Officer, has supervised the Petitioners and the child though under the care and custody of Pastor Osire.

In view of the authorities above, court is of the opinion that the provisions of section 46 are directory and provide the conditions for which the court may exercise its discretion to grant an adoption order but the guiding principle still remains the welfare principle.

In the instant case, the petitioners have been in Uganda for 3 years, according to the records on the court file and according to the Probation Officer, have fostered the child for at least 36 months- see Annexure 'A', a copy of the Foster Care Order.

Court is satisfied that the petitioners have fulfilled the conditions set out in section 46 for the court to exercise its discretion to grant the order and it would be in the best interests and welfare of the child who has been in foster care and custody of other people. She can also grow up in a home with loving parents and care.

The paternal uncle of the child, Pastor Osire was in court and consents to the application.

Consequently, the application is allowed in the following terms and conditions:-

1. The Petitioners, **Ronald Gloetzner** and **Carol Gloetzner** are appointed adoptive parents of **Sharon Osige**.
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 obtain a Uganda passport for the child and renew it from time to time as required by the law.

4. The petitioners are permitted to travel out of Uganda with the child.
5. The petitioners are directed to register the order with the authority responsible for children and family welfare in the State of New Mexico, USA and to file a report once very year regarding the development and state of the welfare of the child to the Registrar, Family Division, High Court, Kampala and to continue to do so until the child is 18 years of age or until directed otherwise.
6. The court makes no orders as to costs.

**Margaret C. Oguli Oumo**

**JUDGE**

**02/11/09**

Present:

1. Mr. Omoding , counsel for the petitioners
2. The petitioners
3. Nalongo Nandaula
4. Elizabeth Nyakwebara