

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

ADOPTION CAUSE NO. 40 OF 2009

IN THE MATTER OF ISAAC RUKUNDO (INFANT)

AND

IN THE MATTER OF AN APPLICATION FOR ADOPTION BY BRENT DAVID POTTS

(APPLICANT)

BEFORE: HON. LADY JUSTICE MARGARET C. OGULI OUMO

RULING:

The applicant, Brent David Potts, a Canadian citizen, brings this application under the Children Act Cap 59 for the following orders:-

1. That he be appointed the adoptive parent of Isaac Rukundo under the provisions of the Children Act.
2. That the cost of the application be provided for.

The petition for adoption is supported by the affidavit of the petitioner, Brent David Potts dated the 15th April, 2009.

The High Court has jurisdiction to hear adoption petitions under section 44 (1) (b) of the Children Act.

Under section 45 (1) (a), the petitioner has to be over 25 years of age and at least 21 years older than the infant.

The child, according to his Foster Care placement and the Foster Care undertaking on the file, was born on 31/10/2009. He is therefore 9 years old.

The petitioner, according to his Marriage Certificate on the court file, at the time he wedded the child's mother, was 33 years in February of 2004. He is therefore 38 years old now.

Brent David Potts being 38 years of age and the child nine years old, makes him 29 years older than the child.

In case of an application by one of the spouses the other spouse has to give her consent.

See: Section 45 (1) (b).

Counsel for the petitioner, Ms. Christine Mayanja submitted that the mother of the child, Irene Rukundo who was present in court consented to the application – a copy of her written consent is also attached on the court file.

Under section 45 (4), the petitioner must have fostered the child for at least 36 months, under the supervision of a Probation and Social Welfare Officer.

In the instant case, the applicant has fostered the child since March, 2001, a period of eight years. A copy of the Foster care order is attached as Annextures “C”. and “D”.

In view of the above, court is of the view that the applicant has fulfilled the requirement for fostering the child under the Act.

Section 46 provides as follows:-

(1) A person who is not a citizen of Uganda may in exceptional circumstances adopt a Ugandan 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) has no criminal record.
- d) has a recommendation concerning his or her ability to adopt a child from his own country’s probation and Social welfare Officer or other competent authority; and
- e) has satisfied the court that his or her country of origin will respect and recognize the adoption order.

In the instant case, the applicant has a Certificate of Residence in Uganda for life, issued in February, 2009

Counsel for the applicant, Ms. Mayanja submitted that the applicant has no criminal record and has a certificate of clearance from Interpol, Annexed on the court record.

The applicant has been resident in Uganda for 9 years in Sendaula Zone L.C.1, Lungujja Parish, Rubaga Division Kampala. The letter from the L.C 1 is attached on the file. So he cannot obtain a recommendation from his country of origin, Canada as to his suitability to adopt. He has a recommendation from the Probation and Social Welfare Officer in Kampala where he is a resident, a copy of the recommendation letter from the LC1 of Sendawula zone LC1 in Lungujja parish Lubaga Division Kampala is attached.

S.47 of the Children Act provides interalia that the consent of the parents if known is necessary for the adoption order to be made.

In the present case, the mother, who is married to the petitioner was in court and consented to the petition. Counsel also submitted that the biological father of the child disappeared when the mother was 6 months pregnant with the child and has not been seen since then.

Consequently, the petition is allowed in the following terms and conditions;

1. The Petitioner, Brent David Potts is appointed the adoptive parent of the child, Isaac Rukundo.
2. The petitioner is directed to register the order with the Registrar of Documents, Uganda Registration Services Bureau, Ministry of Justice and Constitutional Affairs, Kampala.
3. The court makes no order as to costs.

Margaret C. Oguli Oumo

JUDGE

9/11/09

Present:

1. Counsel for the applicants
2. The petitioner
3. Nalongo Nadaula- court clerk
4. Nyakwebara Elizabeth.

