

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

ADOPTION CAUSE NO. 146 OF 2010

IN THE MATTER OF SARAH APEYO, A MINOR

AND

IN THE MATTER OF AN A PETITION BY CHRISTOPHER JOHN MCKIM AND

JENNIFER JANEL MCKIM TO ADOPT SARAH APEYO

BEFORE: HON. LADY JUSTICE MARGARET C. OGULI OUMO

RULING:

The applicants, Christopher John Mckim and Jenifer Janel Mckim, American citizens of 214 West 8th Street Mathews, Indiana 46957, a married couple, bring this application for the following orders:-

1. That the applicants be granted Adoption orders in respect of Sarah Apeyo (a minor)

The child, Sarah Apeyo, is 6years, having been born on 21st September, 2004 – see affidavit of the mother, Anna Okere – Annexure 3A-3.

The applicants were granted legal guardianship of the child, on 2nd October, 2009 – see copy of the order.

Counsel for the applicants Ms. Dorothy Kisaka submitted that, after getting the guardianship order, they proceeded to get a grant of a visa to enable them travel with Sarah Apeyo to live with them in the USA, but the visa was refused on the basis that the information was not sufficient to grant a visa. (See notice to Deny (noid) document As-6, and as a result, the applicants traveled to the USA without the child but they rented an apartment for a friend Norah Nanteza to take custody of and look after the child while they provide for the upkeep of the child.

Counsel further submitted that the applicants through their lawyers sought information gaps.

That at the time of the grant of guardianship order, the applicants had been led to believe that both parents of the child were dead according to the affidavit of an alleged relative of the child by counsel who handled the legal guardianship application.

That counsel learnt through a search that, Ann Okere- the biological mother, was alive and the death certificate were issued based on information provided by the Social Worker, one Joseph Kagimu, which were all false (see report – SA7)

The investigations by counsel revealed that;

The child has a surviving parent; Anna Okere 30 years old and the father Lotiko Joseph passed away and was buried in Karamoja. That the mother lives by rendering local beer (malwa), in Kinawataka , Mbuya parish, Nakawa division in Kampala District and she has 4 children.

Further, that they live in a mud and wattle house next to a stream at Kinawataka, Mbuya Parish, and that the mother is HIV positive and sickly.

Counsel for the applicant submitted that, Anna Okere– the mother, has 4 children, none of whom has ever been to school and the mother is seeking better circumstance for her children. That the child was with the mother in a stone quarry, where the applicant picked her.

The child’s mother Anna Okere stated in court that, she understands that the applicants will take the child away forever and that she was not given any money for giving up the child.

That after failure to get a visa, the child was placed in the care of Oasis Children’s Home under a care order dated 14th June, 2010.

That the applicants having got a guardianship order, now seek for an adoption order.

In view of the fact that the child is an orphan and the mother has limited income to look after her and the fact that the mother wishes to give her up for adoption, court is of the view that, the application will be for the welfare and in the best interests of the child.

The applicants have not been resident in Uganda nor fostered the child and seek to adopt her but for the requirements of **sections 46 (1) (a) & (b)** of the Children Act.

Counsel for the applicant submitted that the child is only six years old, and is in an uncertain situation as the mother had given her up for adoption but because of barriers in the law, they cannot take the children, except with the indulgence of the court.

Further, counsel submitted that the applicants have no other interest in the child except to provide her with warmth, a home and necessities of life.

The petitioners have been recommended for adoption; see Home study Report on the court record.

Counsel submitted that one of the guiding principles in deciding matters of this kind is the welfare of the child and that it is in the best interests of the child that the petitioner be granted exception with regard to fostering for 36 months.

That the consent of the surviving parent has already been given as is required under **section 47** of the Children Act. The mother herself was in court and identified herself with an ID from her LCI Council.

Counsel submitted that, the United States of America recognizes adoption orders by courts in Uganda.

That the applicants have no criminal records: see annexure “H” on the court record– their criminal clearance certificate.

The applicants have fostered the child for over 12 months, since they were given the guardianship order and stayed physically with the child at a hotel Africana.

In view of the fact that the applicants have fostered the child for at least one year, they have no criminal record and the United States government will honor the grant of Adoption and they have the consent of the mother to Adopt, and the applicants have also shown commitment to foster the child as they undertook to cater for the child’s welfare after they were refused to travel with her. The child who looked well in court seems to be thriving under the care of the applicants and it will be for her welfare if the applicants take her since the mother is not well – HIV positive and she has no source of income to look after the child, yet the applicants are ready and willing to cater for this child and provide for her a home and parental love and care.

Although the applicants have not lived here or fostered her for 36 months, it is courts view that it is for the child's welfare that the grant is made. This position is strengthened by the case of ***In re M and infant SCCA No. 22/204***, in which Justice Odoki held that in Adoption matters as in all matters affecting children, the welfare of the child is paramount.

The child's mother here is HIV positive, has other children to look after and has no stable source of income. Consequently, the application is allowed in the following terms and conditions:-

1. The petitioners are appointed the Adoptive parents of Sarah Apeyo.
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 permitted to travel out of Uganda with the child.
5. The petitioners are directed to file a report once every year, regarding the state of welfare and development of the child with the Registrar, Family Division, High Court of Uganda, once every year, until the child is 18 years of age or until directed otherwise.
6. The court makes no order as to costs.

Margaret C. Oguli Oumo

JUDGE

20/10/2010

Present:

1. Colline Talemwa for the applicant
2. Betty Lunkuse – court clerk
3. Oliver Nantamu - Research

