

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

FAMILY CAUSE NO. 145 OF 2010

IN THE MATTER OF ESTHER ATUHAIRWE (INFANT)

AND

**IN THE MATTER OF A PETITION BY CHRISTOPHER JOHN MCKIM AND
JENNIFER JANEL MCKIM TO ADOPT ESTHER ATUHAIRWE**

BEFORE: HON. LADY JUSTICE MARGARET C. OGULI OUMO

RULING:

The applicants, Christopher John Mckim and Jennifer Janel Mckim bring this application under the Children Act, for orders that;

1. The petitioners be appointed adoptive parents of Esther Atuhairwe, a minor.

The application is supported by the affidavit of the applicants dated 15th June, 2010.

At the hearing of the application, the applicants were represented by Mrs. Dorothy Kisaka.

The child is Esther Atuhairwe.

Counsel for the applicants submitted that, the applicants were granted a guardianship order in respect of the child on 2nd October, 2009 – see copy on the court record.

Counsel submitted that, when they applied for a visa for the child, they were served with a notice of intention to deny the visa, due to several reasons, and among them that,

1. There were gaps in the information availed concerning the child.

The information on the death certificate of the parents who were reported to be dead, it was discovered that this parent was an employee of the home that was having custody of the child

Counsel submitted the applicants have taken the initiative to get more information about the parents of the child.

That although in the application, both parents of Esther were reported to be dead, they are alive although they separated at the time the child was born and investigations further revealed that, the mother of Esther was alive in Kanungu, in the countryside and at the time the child got into the home, the child was with a relative in Kampala.

That the documentary evidence shows that, the child was born on 3rd January, 2005.

That the child's father is Aggrey Monday.

That the mother is a holder of ID NO. 11647620, issued by the Electoral Commission code 12068011206 and she was born in 1982.

Counsel submitted that, when the child was in Kampala, she was staying with an aunt, Grace Barigye and efforts have been made to trace Grace but in vain.

That while investigations were going on, the guardians took over the child and placed her in Oasis Children's Home, located in Lubowa (see copy of Registration and Recommendations) from Ministry of Gender and Constitutional affairs and the circumstances of the child is that she is between homes, now as the applicants cannot take to live with them and she is now in an institution waiting court orders.

Counsel submitted that the petitioners relied on information in the affidavit they were given by their counsel who had wrong information provided by the social worker and they cannot come and live in Kampala for the 3 years as they also have 3 little children whom they cannot come with to Kampala.

Counsel submitted that the applicants have undergone a Home study, where they were recommended as suitable adoptees and that they have good standing in the community they live in.

Issue No. 1- whether the application is for the welfare of the child, Esther Atuhairwe?

Counsel submitted that the applicants are victims of a crude social worker and lawyer.

That the applicants have fostered the child for 1 years and the court should invoke the welfare principle and grant the applicants adoption in the interests of the child and for her welfare.

The father of the child, Godfrey Monday has consented to the application and the mother was separated from the father.

The applicants are American citizens, and are married couple. They are both 34 years old and the child is 6 years old. They therefore fulfill the requirements of the law with regard to age,

under section **45 1(b)** which requires the Adoptive parent to be 25 years of age and at least 21 years older than the infant.

Since they are American citizens, we shall consider, whether they fulfill the requirements as to adoption under **section 46 (1)**.

Section 46 (1) gives powers to court to give adoption orders in respect of non citizens if;

- a. They have been resident in Uganda for at least 3 years
- b. They have fostered the child for at least 36 months under the supervision of a Probation and social Welfare Officer, or authority
- c. Have no criminal record
- d. Have a recommendation from the Probation and Social welfare Officer of their country to their suitability.
- e. Their country will accept and recognize the adoption order.

The applicants have not been resident in Uganda, for the 3 years nor have they fostered the child for 36 months, under the supervision of the Probation and Social Welfare Officer of their country or other officer.

The applicants have no criminal record – see annexure.

The parents of the child have relinquished her custody to the Home, pending the finalization of the Adoption proceedings.

In view of the fact that the parents of the child have surrendered the child, and she is now in an institution, and in view of the fact that the applicants are ready and willing to look after the child and further in view of the fact that an institution is not the best environment for a child to grow up in, Court is of the view that, the application if granted will be for the welfare of the child and in her own best interests.

However, since the applicants do not fulfill the requirements as to Adoption, an order for guardianship instead is granted with the opinion for the applicants to adopt in the USA.

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

1. The applicants are appointed legal guardians of the child, Esther Atuhairwe.
2. The applicants are directed to register the order with the Registrar of Documents, Uganda Registration Services Bureau, Ministry of Justice and constitutional affairs, Kampala.

3. The applicants are directed to register the order with the United States Embassy in Kampala and the Uganda embassy in Washington.
4. The applicants are directed to obtain a Ugandan passport for the child and renew it from time to time as required by the law.
5. The applicants are permitted to travel out of Uganda with the child and permitted to complete her adoption in the United States of American.
6. The applicants are directed to register the order with the authority responsible for children in Estes Park, Colorado, USA and to file a report, to the Registrar, Family Division, High Court of Uganda, once every year, regarding the state of the welfare and development of the child until he is 18 years of age or until directed otherwise.
7. The court makes no orders as to costs.

Margaret C. Oguli Oumo

JUDGE

27/10/2010

Present:

1. Colleen Talemwa, counsel for the applicants
2. Betty Lunkuse, court clerk
3. Oliver Nantamu, Research Assistant