

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT Jinja**

**MISCELLANEOUS CAUSE NO. 008 OF 2018
IN THE MATTER OF THE CHILDRENS ACT AS AMMENDED**

**IN THE MATTER OF DAVID MUKISA AND JONATHAN MWESIGWA
IN THE MATTER OF AN APPLICATION FOR ADOPTION BY BYRAN DANIEL
CHAFFIN AND LAURA RUTH OLIVER CHAFFIN**

RULING

BEFORE: HON. LADY JUSTICE EVA K.LUSWATA

Introduction:

BYRAN DANIEL CHAFFIN AND LAURA RUTH OLIVER CHAFFIN, the petitioners filed this petition through M/s Ekirapa & Co., Advocates seeking an order to adopt **DAVID MUKISA AND JONATHAN MWESIGWA** (hereinafter referred to as the children). The application was filed on 23/03/2018 under enabling provisions of the Children (Amendment) Act 2016 (hereinafter referred to as the Act).

Both petitioners and other concerned persons filed affidavits in support of the application and in addition, other supporting documents enumerating the children's background were filed with the petition. All these will form the basis of my ruling.

Counsel filed written submissions as directed and in addition, the court met and interviewed the 2nd petitioner and was able to see the children who are the subject of this application. That interview and counsel's submissions shall also be considered in my ruling.

It is stated briefly in the petition that the petitioners who are American citizens are a married couple, resident both here and in the USA. They have one adopted child Elijah Daniel Chaffin (formerly Elijah Otai) now resident with the 1st petitioner in Texas USA. Both children the subject of this petition are currently under their custody and care vide foster care orders of the

Probation and Social Welfare Officer (hereinafter Probation officer) of Jinja dated 6/7/2017 and 4/8/2017, respectively.

It is stated in the application that, the children DAVID MUKISA and JONATHAN MWESIGWA: -

- (a) Are children of the male sex and unmarried
- (b) Citizens of Uganda
- (c) Born to parents whose identities are not known. Efforts to locate the parents have proved futile
- 10 (d) David Mukisa's approximate age is seven years and Jonathan Mwesigwa's approximate age is three years
- (e) Both children are presently in the custody of the applicants
- (f) Both children have not been the subject of an adoption order or an application or petition for an adoption order
- 15 (g) The petitioners are prepared to meet the costs of this petition

The Law:

In his submissions, counsel relied substantially on Sections 45 and 46 of the Act. In addition, I take special cognizance of Section 3(1) of the Act which provides that;

20 *“(1) The welfare of the child shall be of paramount consideration whenever the state, a court, a tribunal, a local authority or any person determines any question in respect to the upbringing of a child, the administration of a child's property, or the application of any income arising from that administration.*

Thus my decision should and will consider whether the children's welfare will be met by an adoption order in favour of the applicants. See for example **Payne vs. Payne (2001) EWCA 166** and **B vs. B (1940) CH 54**. This principle has been well followed by our courts. See for example **Deborah Alitubeera Civil Appeal No. 70/2011** and **Re AM Adoption Cause No. 12/2017**. In addition, I am mindful of the fact that, inter-country adoption or specifically, a non-citizen of Uganda is allowed to adopt only in exceptional circumstances and even then, only if they fulfill
30 the conditions under Section 46(1) of the Act specifically: -

“(1) A person who is not a citizen of Uganda may in exceptional circumstances adopt a Ugandan child, if he or she –

- (a) Has stayed in Uganda for at least one year;
- (b) Has fostered the child for at least one year under the supervision of the probation and social welfare officer
- (c) Does not have a criminal record;
- (d) Has a recommendation concerning his or her suitability to adopt a child from his or her country’s probation and 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.

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Even then, under Section 46(4) of the Act, my court has powers in exceptional circumstances to waive any of the requirements mentioned above.

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A new addition to the law appears in Section 46 (5) by which certain persons are now permitted to give information that would assist courts to determine that the best interests of the child are protected. These include advocates, probation and social welfare officers or a guardian *ad litem* for the children. That list is not exhaustive and the court may depending on the circumstances presented, invite information from other sources. I notice that additional evidence of relevant persons have been filed to support the application.

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Further in Section 46 (6) & (7) of the Act, adoption should be the last recourse for children and the Court is enjoined to consider a continuum of comprehensive child welfare services. These would include a broad range of services and community based family centered alternative care options which may either be family preservation, kinship care, foster care or, institutionalization.

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The petitioners giving reasons, moved Court to consider waiving the requirement for the one year residence and fostering period. According to their counsel, both applicants returned to

Uganda on 18/6/17. It would follow that the 2nd petitioner has met the criteria for both requirements of residence and fostering. It was not clear when the 1st petitioner returned to the USA to take up his new assignment, but it should have been after May or June 2018. This is because their counsel appeared in Court on 3/5/18 and requested for a hearing date falling not
5 later than June 2018 when both petitioners hoped to travel.

I have considered the grounds advanced in paragraph 15 of the petition as sufficiently sound to persuade me to exercise my discretion to waive the requirement that the 1st petitioner must have resided in Uganda for one year before an adoption order can be made in his favour. In any case,
10 the 2nd petitioner his spouse, has remained here in Uganda and continued with her duties of a foster parent. Being married to the 1st petitioner, I am prepared to believe, that his obligations are carried out through her sufficiently enough in line with those particular legal requirements.

I accordingly grant the prayer to waive the one year residence statutory requirement with
15 reference to the 1st petitioner.

I will therefore now turn to the merits of the application

A brief background of the children and the need for adoption

20 Detailed accounts of both children's background was been given by the applicants, Agatha Orena, Emorut Peter, and Oboke Margaret and Acen Miriam who deposed supporting affidavits.

David Mukisa's birth date is unknown. He was on 21/11/12 found abandoned by one SGT Musana Felix at the Nalufenya Railway Crossing in Jinja. With the assistance of Emorut Peter, a
25 police officer then attached to the Family and Children Protection Unit at Jinja Central Police Station, he was rescued, and a case of child desertion was recorded. He was then referred to the probation officer of Jinja. The latter then handed over the child to the Total Family Outreach/Amani Babies Cottage (herein after referred to as Amani) an NGO providing care and protection for vulnerable children on 21/11/12 as the search for his parents or relatives
30 continued. He was given the names David Mukisa by the management of Amani.

After admitting this child and confirming his health status, Ms. Orena a social worker with Amani visited Jinja CPS several times where she was informed that no persons ever turned up to claim him even after announcements were made on the Basoga Baino FM and NBS Radio Stations or adverts placed in the Bukedde and New Vision Newspapers respectively. David Mukisa was eventually placed in the care of the petitioners on 6/7/16 under the supervision of the probation officer of Jinja.

Jonathan Mwesigwa's birth date is likewise unknown. He too was found abandoned by patients and care givers at the Nalufenya Children's Hospital in Jinja on 2/02/16. A nurse at the hospital handed him over to the Family and Child Protection Unit who then referred him to the probation officer and a further reference to and an admission into Amani was then made on 10/2/2016. His age was on admission estimated to be about five months and he was given the name Jonathan Mwesigwa by the management of Amani. Efforts to trace his parents were made through announcements in the Basoga Baino FM and adverts in the New Vision and Bukedde Newspapers to no avail. Again Ms Orena continued to follow up the child's case at the Jinja CPS and Nalufenya Children's Hospital but was informed that no one ever claimed him. Jonathan Mwesigwa was eventually placed in the care of the petitioners on 6/7/16 under the supervision of the probation officer of Jinja.

There is strong evidence to show that both children's biological parents are unknown and no other relative has claimed them since they were found in their very early infancy. Evidence of efforts to announce the children's existence through newspaper adverts and radio announcements made by Amani were attached to the application. That notification was public and wide enough to have alerted their family of their presence. It is clear that neither their birth parents, nor other family member was interested in receiving them for care and protection. They are technically, abandoned children who as pointed out by the petitioners' counsel, have been in institutional care for the early years of their life. It is an established principle that institutional care of any kind is not the best alternative for bringing up a child. It should only be an option for children who have no living adult, be it family or otherwise, ready to take care of them. In any case, it

should be restricted to the shortest time possible and all efforts made to place abandoned children with loving families.

5 I thus hold that these two children are in need of care and protection. They have been under foster care by both applicants for the last 14 months. They are now legible for an adoption order in favour of suitable applicants.

Do the petitioners qualify to be adoptive parents

10 The petitioners have as a married couple, made an application for a joint order of adoption. I have enumerated the conditions proceeding on adoption laid down in Section 46 of the Act, which I deem they do fulfill.

15 The first petitioner who was born on 9/9/81 is currently aged 37 years. The second petitioner who was born on 23/5/85 is currently aged 33 years. Both petitioners are at least 30 and 26 years older than the children. Both petitioners have remained resident in Uganda since 18/6/17 and have fostered the children for near to that period. Foster care orders for both children are attached to the petition. In his report dated 18/6/18, the probation officer has confirmed that he was involved in placing both children with the petitioners and thereafter actively supervised them through the entire fostering period. I have noted that the 1st petitioner returned to the USA around May 2018 leaving the 2nd applicant in Uganda to continue with the fostering duties.

25 Both petitioners subjected themselves to statutory evaluations in their home country. Reports by the Nighlight Christian Adoptions (an organization licensed by the Council of Accreditation on behalf of the United States Department of State and the Texas Department of Family Protective Services of the State of Texas) are also attached to the petition. I understand those reports to indicate a legal step taken under USA laws by prospective parents pursuant to an international adoption. The reports indicate a comprehensive evaluation of the applicants who were both confirmed to be suitable adoptive parents.

30 I am persuaded that the home study reports are meant to confirm to the government of the USA that the applicants have not only gone through the legal steps prior to an international adoption,

but also that they are suitable adoptive parents. Under such circumstances, the petitioners' home county should accept and respect an order of adoption made by a competent Court in Uganda and will also issue an immigrant visa to the two children pursuant to Section 46 1(e) of the Act. Lastly, the petitioners have confirmed their non-criminal status. It is stated in their respective affidavits that they went through criminal checks during May 2016 and June 2017 and were confirmed to have no criminal history.

Issue 2 – Whether the application is in the interests of the children.

The importance and significance of the welfare principle in our laws with regard to children has previously been emphasized in my ruling. According to Section 3 (3) of the Act, it would entail giving regard to;

(a) The ascertainable wishes and feelings of the child concerned considered in the light of his or her age or understanding.

(b) The child's physical, emotional and education needs;

(c) The child's age, sex, background and any other circumstances relevant in the matter.

(d) Any harm that the child has suffered or is at risk of suffering

(e) Where relevant, the capacity of the child's parents, guardians or others involved in the care of the child in meeting his or her needs.

I have been persuaded that the subjects of this petition are abandoned children who without intervention may end up living under institutional care for the rest of their life. Their first identities were bestowed by the NGO that kindly took them up and thereafter, they have survived as a result of the attention received under foster care. The children are both of tender years and will need support to meet their physical, social and economic needs in line with the provisions of our Constitution for a considerable period of time before they attain majority age. This can be achieved only if they are able to be properly educated, nurtured and physically as well as emotionally supported especially for Mukisa who suffers severe dairy allergies.

The petitioners have presented as suitable parents who will be able to meet the children's' welfare. They have been legally married since April 2005 with no report of marital discourse. Both have attained college degrees and the 1st petitioner is in gainful employment as teacher. The 2nd petitioner is a volunteer Interim director at Amani but intends to return to full time teaching when she returns to her home country. Their joint income, and the fact they have arranged for medical insurance should be sufficient to meet their needs and the addition to their family. In Uganda they are resident at Plot 34 Kiira Road in Jinja Municipality under a formal tenancy. In Texas USA, they are in the process of purchasing a home that formerly belonged to the 2nd petitioner's parents.

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It has been explained in the field Home Study Report that both petitioners have been well instructed on international adoption and demonstrated apparent willingness, preparedness and ability to parent children. That their training in pre-adoption matters meets the requirements of the Hague convention. In addition, the New Horization Adoptions Agency has committed to file periodical placement reports detailing the children's progress.

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The petitioners have demonstrated good parenting skills. It was shown that they have already adopted a child from Uganda, Elijah Daniel Chaffin (formerly Elijah Otai). It is significant that after adopting Daniel, and out of great interest for the Ugandan people and culture, they chose to return to Uganda in June 2017 to work as volunteers at Amani. Through their contacts in the USA, they learnt about the plight of David Mukisa and while volunteering with Amani, they met Jonathan Mwesigwa. They subjected themselves to supervision of the probation officer and were prepared to forego their lives in the USA in order to understand the lived reality and culture of the two boys as our law requires. Under such circumstances, they should be able to support the children through the period of assimilation into the culture of their adopted society, which in my estimation is very different from Uganda. Being practicing teachers, previous adoptive parents of a Ugandan child, and having worked closely with the NGO under whose care the children were entrusted, will certainly be an added advantage.

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In addition, the probation officer, Jinja who was actively involved in the children's placement and fostering filed a positive report in support of this petition. In addition to the regular supervision during the fostering period, the probation officer interviewed the applicants on 11/5/18, extracts of which I will consider in brief.

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Both petitioners are God fearing and their decision to adopt in Uganda was highly motivated by their strong spiritual beliefs. They intend to bring up the children on those value systems. As a married couple, they believe in resolving conflict through healthy means. They are fully committed to love and care for the two boys and have a supportive extended family that is also looking forward to the adoption. It is hoped that in the case of their unfortunate demise, a member of the family will step up to continue with the duties of adoption. The petitioners have prepared themselves well for the intended international adoption by residing in Uganda where they have come to learn and now love and appreciate Ugandan culture. They are eager to practice the customs and his history of Uganda for the benefit of the children. So far the petitioners have looked after the children well, placed Mukisa in a good school, and ensured that the children have gone through all the health milestones, including a special diet for Mukisa.

The probation officer in addition confirmed that the 1st petitioner earns an income of about USD 24,000 annually and it is hoped that that income will be supplemented by that of the 2nd applicant when she returns to work in the USA. The couple own property assets of about USD 30,000 and in Uganda, reside in a spacious, tastefully furnished and secure home with a definite address. These are strong facts to confirm the suitability and capability of the petitioners to adopt young Ugandan children. The welfare of these children should be catered for because they will be nurtured, educated and provided for in a secure and loving home where God is put first. The petitioners are offering a good home that greatly superceeds an institution to which these boys would be destined for.

In summary, having keenly studied this application and all supporting evidence and documentation, considering recommendations by various private persons, designated authorities both in Uganda and the USA, having interviewed and observed the 2nd petitioner and understood

the current status of the two children, I am persuaded that granting the order of adoption in favour of the petitioners will be in the best interests of the said children. I accordingly allow the application and order as follows:-

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1. The petitioners **BYRAN DANIEL CHAFFIN AND LAURA RUTH OLIVER CHAFFIN** are granted an order of adoption in respect of the children **DAVID MUKISA** and **JONATHAN MWESIGWA**.
 2. The petitioners may travel with the children to the USA or any other part of the world in order to fulfill their obligations as adoptive parents.

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 3. I direct that the Registrar of Births and Deaths makes an entry recording this adoption in the Adopted Children Register.
 4. It is further directed that this adoption be furnished to the consular department in the Ministry of Foreign Affairs at Kampala and at the Ministry of Gender, Labour and Social Development in Kampala.

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 5. The petitioners shall meet the costs of this application.

I so order.

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EVA K. LUSWATA

JUDGE

11/10/2018

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