

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT JINJA  
ADOPTION CAUSE NO. 036 OF 2018**

5 **IN THE MATTER OF THE CHILDREN ACT [CAP 59] AS AMMENDED  
AND  
IN THE MATTER OF THE ADOPTION RULES SI 59-1**

10 **AND  
IN THE MATTER OF A PETITION BY EMILIE ROBERTE MARY  
LARTER FOR THE ADOPTION OF MUKAMA ADAM PAUL**

**RULING**

15 **BEFORE: HON. LADY JUSTICE EVA K. LUSWATA**

**Introduction:**

This application was presented by **EMILIE ROBERTE MARY LARTER**,  
through M/s A. Mwebesa & Advocates seeking an order to adopt **MUKAMA**  
20 **ADAM PAUL** (hereinafter referred to as the child). The application was filed on  
20/06/2018 under enabling provisions of the Children Act (as amended in  
2016)(hereinafter referred to as the Act) and Adoption Rules.

The petition is supported by an affidavit by the petitioner and in addition, other  
25 concerned persons filed affidavits all of which gave the child's background and  
petitioner's credentials. Some of those deponents were interviewed in Court on  
5/12/2018. Their submissions, statements and other evidence, will form the basis  
of my ruling.

It is stated briefly in the petition that the petitioner is a citizen of the United Kingdom aged 26 years and at the time of filing the petition was resident at Bukaya, Njeru Municipality, Buikwe District. She is unmarried and has no biological or adopted children. In the United Kingdom she resides with her brother and parents, Jacqueline and Peter Larter and her brother. She was authorized to foster the child under a Foster Care Placement Certificate dated 17/8/2016 and currently has custody of the child.

It is stated in the application that, the child **MUKAMA ADAM PAUL**: -

- 10 (a) Is a minor aged 4 years and 8 months and of the male sex
- (b) A citizens of Uganda having been born to Mwami David and Nangobi Sarah (now deceased) on 17/8/2016
- (c) Has not been the subject of an adoption order or an application or petition for an adoption order
- 15 (d) The petitioner is prepared to meet the costs of this petition

**The Law:**

It is now cemented in our law that any decision that concerns the person of a child or their property shall have first cognizance of their welfare. It is provided in section 3(1) of the Act (as amended) 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*  
25 *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 petitioner. 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**. Now the term ‘welfare’ has not been defined by the Act. I would thus adopt the definition given by the Court in **J Vrs C AC 668** that:

*“...more than that, the child’s welfare is to be treated as the top item in a list of items relevant to a matter in question. (Welfare) connotes a process when all relevant facts, relationships, claims and wishes of parents, risks, choices and other circumstances are taken into account and weighed, the course to be followed will be that which is most in the interests of the child”.*

In our law, that definition is reproduced in Section 3(3) of the Act, where the Court before making a decision should take the following into consideration;

- (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.*

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 the conditions under Section 46(1) of the Act specifically: -

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*“(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;*

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*(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*

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*(e) Has satisfied the court that his or her country of origin will respect and recognize the adoption order.*

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

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information from other sources. I notice that additional evidence of relevant persons have been filed to support the application.

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.

10 **Does the petitioner fulfill the legal requirements for inter country adoption?**

Documents attached to the petition indicate that the petitioner was born on 04/10/1991 making her nearly 28 years. She is at least 24 years older than the child. She arrived in Uganda in 2014, and has lived here since then, working as a volunteer and teacher at a local primary school. She is currently resident in Bukaya, Njeru Municipality, Buikwe District and a letter of the local authorities (dated 17/5/2018) confirms that residency. On 14/2/2019, Mukama Adam the child's father granted his consent for the child to be placed under foster care of the petitioner, and fostering was done under the supervision of the senior probation and social welfare officer of Jinja. She has accordingly completed the fostering period as required by our laws. Having been resident in Uganda for over five years, she obtained and filed with the petition, a certificate of good conduct issued by the Uganda Police Force on 16/5/2018 confirming that she has no criminal record in this country.

25 I have noted that nothing was filed to confirm that the petitioner has obtained the necessary recommendations from her home country concerning her suitability to

adopt a child from Uganda. In lieu of that recommendation, the petitioner filed a letter issued by the British High Commission here in Uganda on 12//12/18. It states that since the petitioner was not habitually resident in the UK, the British Government did not have a role in assessing her suitability to adopt or checks to determine whether she is fit to parent. It was also explained by Ms. Emma Cohen an Associate Solicitor with Bindmans LLP, a law firm in London that, since the petitioner is not currently resident in the UK, there is no requirement for her to be assessed to adopt before she can apply for a visa for the child to accompany her to the UK. Ms. Cohen further advised that if it is confirmed that the petitioner has been resident in Uganda with the child for a period of 18 months or more, then the child should be eligible for a visa granting him leave to enter and reside in the UK indefinitely.

I consider that to be expert advise on the matter since Ms Cohen introduced herself as a solicitor who has worked in the field of immigration, nationality and asylum law for the past 23 years. That opinion was confirmed by the communication of the British High Commission that if the adoption order is considered as being genuine and lawful, then the child will be treated as if he were the biological child of the adoptive parent for immigration purposes and will be granted entry clearance or in the alternative, my order could be treated as a ‘de-facto’ adoption. My understanding of the opinion and statement is that the UK Government will, after due consideration of its peculiar facts, respect and recognize the adoption order.

In my view, the applicant generally fulfilled the requirements of inter country adoption.

### **A brief background of the child and the need for adoption**

An account of the child's background was given by his birth father, other relatives and those in whose care he was entrusted after birth.

5 The child Mukama Adam Paul was born to Mwami David and Nangobi Sarah on 10/9/2014. His mother died two days after his birth and a death certificate was issued by the Jinja Referral Hospital. His father who has seven other children could not look after him. He was, and is still a peasant farmer and both him and Nangobi shared the farming responsibilities in order to maintain the family. He was earning  
10 very little from his work yet he had two other wives and an equally large family to cater for. He was thus unable, physically and financially to cater for the child.

With that predicament, just a few days after the child's birth, Mwami sought the assistance of M/s Whisper Children Home (hereinafter referred to as the Home)  
15 located in Mutai Trading Centre who accepted to take in the child and promised to find sponsors to cater for his welfare and future needs. It is in that Home that the petitioner was introduced to the child. Ntambula Kyakulaga Harri-Sam the administrator of the Home confirmed the above account. He recounted that the child was received by the Home in September 2015, and a care order subsequently  
20 issued by the Children Court of Kagoma. That the management made futile efforts to resettle the child with his family because they all claimed not to be financially able to provide for him. The petitioner who was then a volunteer with the Home, offered to provide for child and subsequently gained formal fostering. She has had custody of the child since then.

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When I interviewed Mwami on 5/12/18, he repeated his inability to take care of the child. That his station in life had not changed. He was still a peasant farmer with a meagre income which could not meet the child's need alongside with those of his other six children, left by Nangobi. He was enthusiastic about the adoption and felt the petitioner was a suitable adoptive parent since she had looked after the child since he was born. He signed a formal consent to the adoption alongside the child's other relatives, specifically, Nabirye Nasabu and Nabirye Damalie, both maternal aunts. Ntambula equally supported the adoption. He stated in his affidavit that the petitioner had grown to love the child and possessed all the necessary qualifications to adopt him. That she would be able to provide his with a home which will benefit his welfare.

This child has one biological parent who has shown inability to care for him. He is financially constrained and has a large polygamous family to care for. For that reason, the child who lost his mother during childbirth was entrusted into institutional care very early in life. That type of nurturing is not the best option for any child and he was fortunate that the petitioner was stationed at the Home and offered to care for him quite early in life. In my estimation, this child knows the petitioner much better than he knows his own family. It is her who saved him from institutional care and has so far offered him a home. He is a child in need of care and protection and for his intergration into a loving home to be legitimized.

However, It is still remains an issue, whether the petitioner will make a suitable adoptive parent for this child.

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**Does the petitioner qualify to be an adoptive parent?**

The petitioner, as a single female unmarried national of the United Kingdom has made an application for an order of adoption in respect of a male minor Ugandan.

5 The petitioner stated and proved that she first arrived in Uganda in 2014 and enrolled as a volunteer at the Whisper Children's Home. When the Home failed to find a sponsor for the child, she took up that responsibility which was formalized when she was allowed to foster him. The child has been in her custody since then, and she has provided for him all necessities of life and ensured that he receives an education.

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The petitioner who is a graduate of the Worcester University in the UK, is currently gainfully employed as a teacher trainer in the early years section of the Kira Junior Preparatory School. The School has given her a positive recommendation as a good teacher who deeply loves and cares for children. She earns an annual income of Shs. 36,000,000 and has savings, which should be sufficient to cater for the needs of the child. She is fully committed to care for this child and although not religious, will bring him up with values of kindness, faithfulness, integrity and honesty. The petitioner stated that back in the UK, she shares her home with her brother and parents in a spacious home which has recreational and other facilities nearby. Preparations have already been made for the child to join the family and he will have his own room and attend school within the same village. The petitioner confirmed that in the unfortunate event of disability, her parents are prepared to take on parental responsibility of the child.

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25 Giving reasons backed with formal documentation, the petitioner is unable to obtain from her home country, an evaluation for her suitability as an adoptive

parent. However she did subject herself to an evaluation by the probation and social welfare officer of Jinja who compiled a detailed report that was filed alongside this petition.

5 It is stated in the report that the petitioner is in good health and very capable of caring for the child with whom she has very close interaction. That with her earnings, and a health insurance package, she will be able to meet all his needs and in addition support him spiritually, and because of her training, she should be able to train and discipline him according to his age. In addition that she has a deep love  
10 for children and interacts with other parents regularly who could give her useful advise on parenting and also assist with the same roles. The report also indicated that the petitioner resides on the shores of River Bukaya, Buikwe District in a spacious house with many useful services like a library, hospitals, schools and Churches in the vicinity. The PSWO highly recommended the adoption.

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I note that in addition to other conditions, the Children Act (under Section 45 (3)) restricts a Court from granting an adoption order to a sole female applicant in respect of a male child save where special circumstances justify, as an exceptional measure, justifying the making of the order.

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I am already satisfied that beyond the petitioner, no other adult is currently able and willing to care for this child. He may thus be destined for permanent institutionalization. The petitioner has satisfied this court that with her upbringing, credentials, personality and income, that she will not be of harm to this male child.  
25 Her passion for teaching and caring for young children and professed love for Uganda, her people and culture, should erase any fears that she may victimize or

act in a manner prejudicial to his welfare. Most important, the petitioner has cared for this child since he was only a few days old. He is the only parent he has known and the bond between them must be real and should be protected. Maintaining it, despite their opposite gender, should be of paramount interest to this Court. In my  
5 view therefore there are strong reasons justifying an adoption order in favour of the petitioner in respect of this male child.

In summary, having keenly studied this application and all supporting evidence and documentation, considering recommendations by various private persons,  
10 designated authorities in Uganda, the British High Commission in Kampala and expert advise on immigration matters from the UK, and having interviewed and observed the petitioner and understood the current status of the child, I am persuaded that granting the order of adoption in favour of the petitioner will be in this child's best interests. I accordingly allow the application and order as follows:-

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1. The petitioner **EMILIE ROBERTE MARY LARTER** is granted an order of adoption in respect of the child **MUKAMA ADAM PAUL**
2. The petitioner may travel with the child to the United Kingdom or any other part of the world in order to fulfill her obligations as an adoptive parent.
- 20 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.
- 25 5. The petitioner shall meet the costs of this application.

I so order.

Signed

5 **EVA K. LUSWATA**  
**JUDGE**  
**11/7/2019**