

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT JINJA  
ADOPTION CAUSE NO. 18 OF 2018**

5 **IN THE MATTER OF THE CHILDREN ACT [CAP 59] AS AMMENDED  
AND**

**AND IN THE MATTER OF KYAKUTWIKI PATRICK AND MUYAYA  
JACKSON**

10 **AND**

**IN THE MATTER OF A PETITION OF AN ADOPTION ORDER BY  
PATRICIA CAMPOS DOMENECH**

15 **RULING**

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

**Introduction:**

20 **PATRICIA CAMPOS DOMENECH**, the petitioner, filed this petition through  
M/s Ekirapa& Co., Advocates seeking an order to adopt **KYAKUTWIKI  
PATRICK AND MUYAYA JACKSON** (hereinafter referred to as the children).  
The application was filed on 24/05/2018 under enabling provisions of the Children  
Act (as amended in 2016) (hereinafter referred to as the Act).

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The petitioner and other concerned persons filed affidavits in support of the  
application and in addition, other supporting documents enumerating the children's  
background and petitioner's credentials. The petitioner was interviewed in court on  
5/9/18 and her counsel made brief submissions in Court on 12/7/2019. These  
30 together with the petition and evidence, will form the basis of my ruling.

It is stated in the petition that the petitioner aged 40 years is a national of Spain who was by then resident at 3329 Maunalao Avenue, Honolulu Hawaii in the USA. During an interview in Court, she stated that after filing the petition, she returned to Spain her birth place, where she intends to reside permanently. On 12/7/19, the petitioner filed a supplementary affidavit confirming that she is entitled to permanent residence in the USA and her current address in Spain is Guillem De.Castro 46-5A, 46001 Valencia Spain. She is divorced and has no biological children. She was authorized to foster the children under a Foster Care Placement Certificate dated 18/3/2015, and currently has custody of both children.

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It is stated in the application that, the children **KYAKUTWIKA PATRICK** and **MUYAYA JACKSON**: -

- (a) Are minor children of the male sex
- (b) Citizens of Uganda aged 8 years 4 months and 7 years 8 months respectively
- (c) Born to Kyakutwika Robert and Nakisuyi Rebecca
- (d) Both have not been the subject of an adoption order or an application or petition for an adoption order
- (e) The petitioner is prepared to meet the costs of this petition

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### **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;

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*“(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 applicant. 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 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.*

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

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.

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.

Our law does not define exceptional circumstances. In my view, they would be or amount to unusual, extraordinary or not typical circumstances surrounding the upbringing or commonly associated with the upbringing of a child. Of course, the court should consider these to be dependent on the circumstances of each individual case.

In her interview, the petitioner stated to have visited Uganda six times since 2015. Each visit would last an average period of two months. It is thus conceded that she has not lived in Uganda for a continuous period of one year as required by law. Her counsel invited court to consider waiving the requirement for the one year residence in Uganda. He argued that a waiver would be in the best interests of the children who need a home and a parent to care for them. That the petitioner is the only person who has shown commitment to look after them, yet she needs to keep

her job to earn an income, and is also obligated to look after her mother who lives in Spain. That since she has visited Uganda for an aggregate period of over 100 days, she is well acquainted with Uganda culture and will continue visiting to help Uganda children learn soccer.

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It was held by Justice Mukiibi in his decision in **Adoption Cause No. 19/2017 (In the Matter of Margaret Ruth Kisakye)** that the Act does not seem to require that the one year should run immediately before one presents a petition for adoption. I have also previously held that the purpose of the one year residence for a petitioner is meant to be a period not only when the petitioner gets to bond with the child and their family (if one exists), but also an opportunity for them to learn and better understand the culture and way of life of their future ward. Creating bonds within the home environment of the child, is beneficial to both parties because the petitioner will be better prepared to introduce the child into the new social order into which they are destined. The adoptive parent will be better equipped to explain and handle many of the social characteristics of the child and protect them from any social prejudice that they may suffer in the new country.

The petitioner has made several visits to Uganda and it is reported in her home study report that it is a country she has come to love. Though her love for soccer and a giving nature, she has reached out to many under privileged Ugandan children. Her first visit lasted nearly four months and entailed working in areas where children in need reside. She must have come to learn and understand the children's way of life. She has indicated her intention to continue visiting Uganda for the same purpose, bringing the children with her and thus affording them an opportunity to meet family and entrench their roots here. It is understandable that being unmarried, she has no partner to share the burden of earning an income with

which to support the children. It was mentioned in the home study that she resides with her mother and thus the need to care for her.

5 Sufficient reasons have been advanced to explain the applicant's inability to reside in Uganda for one year. I accordingly grant the prayer to waive the one year residence statutory requirement, with reference to the petitioner.

I will now turn to the merits of the petition

10 **A brief background of the children and the need for adoption**

An account of both children's background was given by their parents, grandfather and Grace Kisaame with whom they live now, all who deposed supporting affidavits.

15 The children were born to Robert Kyakutwika and Nakisuyi Rebecca who had a relationship and lived together for three and a half years from 2006. In their affidavits, both Robert and Rebecca recounted a tumultuous relationship ending in their acrimonious separation. Rebecca left, found a new partner, and lived with the younger child for a few years. That she was forced to return him when Robert  
20 insulted her new partner who ordered the child out of their home. She confessed that she has never seen both children since she returned Patrick to his father. Patrick Kyakutuwa the children's grandfather confirmed that account by stating that the child Patrick was returned and abandoned at his house when he was only two and a half years old. He was specific that his son, their father was too poor and  
25 lacked the means to support them.

According to Robert Kyakutwika the children's father, after Rebecca left him, he had several other relationships, until the latest partner one Scovia who routinely mistreated the children and under fed them. He too has to make out a living outside his home and could feed them regularly. They would sometimes go with one meal or no meal at all in a day. He confessed that he could not afford to cloth or educate them and often, they wandered around the village begging for food. It was in that deplorable state that one Kisaame and the petitioner found the children upon which the petitioner voiced her interest and begun supporting them.

Kisaame explained that he first met the petitioner when she visited Uganda during 2015 as a volunteer at the Hill Land Primary School in Wakiso District. It was during a tour of his home district with the petitioner that he first met the children and their father. Upon obtaining consents of the children's father and grandfather, and because she had to return to the USA where she resided then, the petitioner had the children enrolled in the boarding section of the school and requested Kisaame to have them stay at his home during holidays. She visits them at least twice every year and also sends financial support directly to Kisaame. He was emphatic that he was not ready to foster the children as his intervention is only temporary.

There is sufficient evidence to show that before meeting the petitioner, the lives and general welfare of these children was dire. Their parents clearly demonstrated inability to live with and care for them. Their mother abandoned them when very young and her situation now, in a new relationship in which they will be regarded and treated as unwanted step children, may result into serious harm. Their father who genuinely attempted to take on the role of a single parent, is incapacitated by his meagre income and again, his new partner is not ready to assist him care for

them. The grandfather who already has a large family, is equally unable to have them. The evidence that they were often left destitute to beg for food in the village was supported by photographs showing their deplorable state at that time.

5 I have noted that in their previous state, these children were being deprived of all the basic needs of life as enshrined in both the Constitution and the Act. Suffice to note, all the three adults who would under the law have the responsibility to care for them, have voiced their wish for the children to be adopted as the best option to cater for their future. They confirmed their wishes in consents filed in support of  
10 the application. Those present at the sitting in Court, confirmed their no contest to the adoption.

I thus hold that these two children are in need of care and protection. They have been under foster care of the petitioner since 18/3/15. They are now legible for an  
15 adoption order, and my next task would be to confirm whether the petitioner is a suitable adoptive parent in the circumstances of this case.

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

The petitioner as a single unmarried Spanish national has made an application for  
20 an order of adoption in respect of both children. I have enumerated the conditions proceeding on adoption by a non national laid down in Section 46 of the Act, which I will not repeat here.

Documents attached to the petition indicate that the petitioner was born on  
25 12/3/1977 making her 42 years. She is at least 33 years older than the older of the two children. She stated and proved that she first arrived in Uganda in 2015 at as a volunteer in a school in Wakiso District. She obtained authority to foster the



children in March 2015 and since then, she has been in and out of Uganda four times principally to check on and visit with them at the home of her friend Kisaame. She explained that she is single and has no plans to remarry in the near future and resides with her mother in Spain, her country of birth. She intends to  
5 raise the children in Spain or the United States of America

The petitioner stated both in the petition and in Court that she has the ability and means to care for the children. She is employed as a Finance assistant by the Atlantic International University Honolulu, and earns a monthly income of about  
10 £4,500. It is an on line job and thus, she works from home and should have time to care for both children. She has for the past four years met all their needs through Mr. Kisaame, by placing them in school and catering for all other requirements. She should be able to continue doing so. Beyond that, the petitioner has expressed much love and concern for the children. When she met them the first time, she  
15 assessed their plight and made a quick decision to look after them, and has faithfully fulfilled that resolve since then.

I have noted that as one of the requirements of inter country adoption, the petitioner subjected herself to an evaluation by M/s Hawaii International Child, a  
20 state licensed adoption agency in Honolulu Hawaii. She explained that although born and now resident in Spain, she migrated and lived in Hawaii between 2012 and early 2018, the period during which she met the children. This would explain the choice of that particular agency, and after perusing it, it satisfactorily represents the petitioner's' capabilities as a prospective adoptive parent.

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The report was a result of one home visit and several faced interactions between the petitioner and a social worker. It is revealed that the petitioner first came to

Uganda in February 2015 as a volunteer with the International Volunteer HQ and Goals for Freedom organizations that offer medicare and distribution of food to Ugandan children. That in addition, being a long term soccer coach, she coaches vulnerable Ugandan children in the game. She has been on several missions for the same purpose one of which she met the children and begun supporting them. That evaluation revealed the petitioner to be a person with much love, strong ethics and with strong family and social bonds. That she has received in-depth counseling in general issues of adoption including the processes of adoption, emotions and health, all which must be considered as important in the IAA/Hague Convention. She has no criminal record and is in excellent health.

Likewise, the petitioner subjected herself to an evaluation by the Probation and Social Welfare officer (PSWO) of Jinja who filed a report recommending the adoption. He stated that he had visited with and interacted with both the petitioner and the children and observed that she loved and nurtured them well and could provide them with a stable, loving family relationship. That she is religious and hospitable and determined to care for them, and had so far provided for all their needs including placing them in a good school. He confirmed that she had successfully completed the fostering period.

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 male children save where special circumstances justify, as an exceptional measure, the making of the order.

I am already satisfied that beyond the petitioner, no other adult is currently able and willing to care for these children. They may thus be destined for permanent

institutionalization. The petitioner has satisfied this court that with her upbringing, credentials, personality and income, she will not be of harm, to male children. Her passion for soccer should be an attraction to the boys and a way to connect with them. It was revealed that she has played and taught soccer for most of her life and has shared that passion with these children and many other children in Uganda. I take judicial notice of the fact that football is a much loved and well played sport in both Uganda and Spain, and the children should be able to continue when the game then they live with the petitioner. In Court, the older child affectionately referred to the petitioner as “Coach Pat” signifying that these children and the petitioner have already found an important hobby they all enjoy and share. Being a woman, with motherly instincts, the adoption order should be an advantage to the children whose biological mother abandoned them when very young and was not prepared to have them in her life again. Therefore, there are reasons justifying an adoption order in favour of the petitioner in respect of two male children.

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

1. The petitioner **PATRICIA CAMPOS DOMENECH** is granted an order of adoption in respect of the children **KYAKUTWIKA PATRICK** and **MUYAYA JACKSON**.

2. The petitioner may travel with the children to the Kingdom of Spain, United States of America or any other part of the world in order to fulfill her obligations as an adoptive parent.
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.
5. The petitioner shall meet the costs of this application.

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I so order.

Signed

**EVA K. LUSWATA**

15 **JUDGE**

**15/7/2019**