

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(FAMILY DIVISION)**  
**ADOPTION CAUSE NO. 22 OF 2023**  
**IN THE MATTER OF WALUGEMBE SOLOMON ISAIAH (A CHILD)**  
**AND**  
**IN THE MATTER OF A PETITION FOR ADOPTION BY ANTHONY**  
**MARK BASABA AND MARY ELIZABETH BASABA FOR THE**  
**ADOPTION OF WALUGEMBE SOLOMON ISAIAH (THE CHILD)**

**RULING BEFORE: HON. LADY JUSTICE CELIA NAGAWA**

**1.0 Introduction**

- 1.1 Anthony Mark Basaba and Mary Elizabeth Basaba (hereinafter referred to as “the Petitioners”) moved this Court seeking an order for the adoption of Walugembe Solomon Isaiah (hereinafter referred to as “the child”).
- 1.2 The Petition is brought under the provisions of **Children Act, Cap. 59 (as amended)** in particular **Sections 45 & 46, Sections 14 & 33 of the Judicature Act, Cap. 13 and Article 139 (1) of the Constitution of the Republic of Uganda.**
- 1.3 The child, Annet Basaba the Petitioners’ adopted daughter, Hannah Basaba the petitioner’s biological daughter, Edward Kasalirwe and Nanyanzi Florence, the child’s biological parents, Harriet Zalwago the child’s step sister and Joyce Namigadde the Probation and Social Welfare Officer Luweero were present at the hearing.

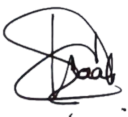
1.4 At the hearing, the Petitioners were represented by Ms. Rebecca Mugabi of M/S Sseryazi, Mugabi & Company Advocates, Kampala.

## **2.0 Background of the Child**

- 2.1 Walugembe Solomon Isaiah was born on 6<sup>th</sup> October, 2010 in Luteete Village, Bwaziba Parish Luwero District by a one Nanyanzi Florence and Kasalirwe Edward. The child's mother has six biological children including the child.
- 2.2 Walugembe Solomon Isaiah's mother was a known alcoholic addict who sold charcoal in Luteete Village. The child was abandoned by her mother who left him in the care of her sister Harriet who had dropped out of school. At the time, SOS Ministries provided the necessary support eventually aiding Harriet in getting back into school at Ssaku Senior Secondary School in 2017.
- 2.3 By the time Harriet went back to school, Solomon did not have a place to stay as the only person willing to take him was his brother who became very ill and it was at this time that the child was taken in by the Petitioners.

## **3.0 Background of the Petitioners.**

- 3.1 The 1<sup>st</sup> Petitioner Basaba Mark Anthony is a Ugandan citizen born on 24<sup>th</sup> January, 1977 in Kampala Uganda. He was raised in Uganda and is a born again Christian. He is currently employed with Sufficiency of Scripture Ministries, USA/Canada as a Missionary. The Petitioners are both satisfied with Mr. Basaba's employment and have no desire to leave Ministry in Uganda.



- 3.2 The Petitioner receives a salary of 2,200 USD a month. He has land in Kubamitwe which helps produce food for the family. The Petitioners have a joint account with savings of 20,000 USD. The 1<sup>st</sup> Petitioner also has a retirement account from working in America of 4000 USD. He also has a term life insurance worth 125,000 USD.
- 3.3 The 2<sup>nd</sup> petitioner is an American citizen born on 16<sup>th</sup> October, 1985 in Prescott Arizona USA. She is a born again Christian. She has a Bachelor of Arts in Liberal Studies Elementary Education, A Bachelor of Arts in Science in Nursing and a Masters in Biblical Teaching.
- 3.4 The Petitioners got married on 4<sup>th</sup> August, 2012 and have one biological child and 2 adopted children aged 9, 11 and 3 years. The petitioners reside at Kubamitwe Luweero at a 2000 square feet home with enough room to raise the children.

#### **4.0 How the Petitioners learnt about the Child.**

- 4.1 The Petitioners learnt about the plight of the child through Shannon Patrick Hurley, the director and founder of Sufficiency for Scripture Ministries in Luweero District.
- 4.2 The child was raised by his siblings for 3 years specifically by his sister Harriet who was in need of Secondary Education. SOS Ministries helped build their house and sponsor the children to finish their education. The child's elder brother Musanje who was willing to look after him fell ill and was unable to do so.
- 4.3 Walugembe Solomon Isaiah has been under the care of Mr. and Mrs. Basaba since February after his sister who was his care taker at the



time went to boarding school. The child has been a part of the Basaba family and has thrived well under the consistent care of the family.

- 4.4 Solomon has been living with the Basaba family since 2017 and the family has loved him as their own child. Solomon is now in Primary Six. They have one biological daughter who has loved him as her brother from the very beginning.

## 5.0 **Evidence of the Petitioners.**

### **1<sup>st</sup> Petitioner: Anthony Mark Basaba**

1. The 1<sup>st</sup> petitioners is a dual citizen of Uganda and the United States of America. Copies of the relevant pages of his passport, national identification card and Dual Citizenship Certificate are marked annexures **“A”**, **“B”** and **“C”**.
2. The Petitioners while in Uganda reside at Kubamitwe Village, Buyuki Parish, Katikamu Sub County, Luweero District and while in America they reside at 4 Sherwood Drive Richwood TX7531 Texas USA. Copies of Certificate of Titles are attached and marked **“D”**.
3. The Petitioners got married on 4<sup>th</sup> August, 2012 and their marriage certificate is marked annexure **“E”**.
4. The petitioners have one biological child named Hannah Elizabeth Basaba whose birth certificate is marked **“F”**.
5. The petitioners have two adopted children named Micah Lewis Basaba and Annet Ruth Basaba and the notarized copies of their adoption orders and birth certificates are marked **“G & H”**.



6. The 1<sup>st</sup> petitioner is a program manager at Sufficiency of Scripture Ministries and a notarized copy of his letter of employment is marked **"I"**.
7. The child is currently in the care of the petitioners and a copy of the foster care certificate is marked **"J"**.
8. DNA results confirmed that Kasalirwe Edward is the biological father of the child. The results are marked annexure **"K"**.
9. The petitioners have been recommended as fit and proper adoptive parents. A copy of the Home Study Assessment is marked **"L"**.
10. The petitioners are financially stable and a copy of their financial statement is marked **"M"**.
11. The 1<sup>st</sup> petitioner attached a copy of his criminal clearance and certificate of good conduct marked annexure **"N"** on his affidavit.
12. He also attached a copy of his medical report in evidence of the fact that he is free from any communicable, mental and physical illness that may endanger the child and is marked **"O"**.

**2<sup>nd</sup> Petitioner- Mary Elizabeth Basaba**

13. The 2<sup>nd</sup> Petitioner is a citizen of the United States of America. Her passport and Birth Certificate are marked **"A2 and B2"**.
14. She is a resident of Uganda and her certificate of residence is marked **"C2"**.
15. The 2<sup>nd</sup> Petitioner confirms that she has no criminal record. Her certificates of criminal clearance and Good conduct are marked **"E2 & F2"**.



16. She presented a medical report marked “G2” in evidence of the fact that she is free from any communicable, physical or mental impairment that could endanger the child.

**Florence Nanyanzi. Child’s biological Mother.**

17. The child’s biological mother is a female Ugandan aged 53 years. A copy of her National Identity Card is marked “A3”.

18. She currently resides in Kubamitwe village and an LC1 letter is marked “B3”.

19. She confirmed that she is the biological mother of the child and attached his birth certificate marked “C3” in evidence.

**6.0 Issues for court’s determination are; -**

**1. Whether this court has the jurisdiction to entertain the matter?**

**2. Whether the Petitioners are suitable to be declared the adoptive parent of the child?**

**3. Whether this petition is in the best interest of the child?**

**4. Whether the child’s name can be changed upon full adoption?**

**7.0 Submissions by Counsel for the Petitioner.**

7.1 Ms. Rebecca Mugabi counsel for the Petitioner filed written submissions on 18<sup>th</sup> July, 2023. I have carefully perused the record and considered the submissions of learned counsel. I have also read a number of authorities from this Court on Inter Country Adoption that will assist me in determining this petition.



## **8.0 Determination of the issues**

### **Issue No. 1. Whether this court is has the jurisdiction to entertain the matter?**

- 8.1 The Jurisdiction of this petition is provided for under Section **44(1) (b) of the Children's Act, Cap 59** and **Rule 17 of the Children (Adoption of Children) Rules. Section 44 (1) of the Children Act**, provides that in cases where either the child or the applicant is not a citizen of Uganda, the application shall be made to the High Court of Uganda and the court may, subject to this Act, grant the application.
- 8.2 In the instant petition, the child Walugembe Solomon Isaiah, is a Ugandan citizen while the 1<sup>st</sup> Petitioner is a dual citizen of the United States of America and Uganda. The 2<sup>nd</sup> Petitioner is an American Citizen. Therefore this an inter country adoption and this Court has jurisdiction to entertain this petition. Accordingly, this issue is resolved in the affirmative.

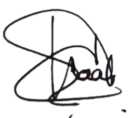
### **Issue No.2: Whether the Petitioners are suitable to be declared the adoptive parents of the child Walugembe Solomon Isaiah?**

- 8.3 Adoption is the creation of a parent-child relationship by a judicial order between two parties who are not related, the relation of parent and child created by law between persons who are not in fact parent and child. **See 55 Bryan A Garner, Black's Law Dictionary, (9<sup>th</sup> Edn. A. Thomson Reuters Business, 2009) 50.** It is the legal process through which an individual or a couple assumes the legal



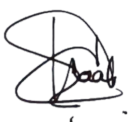
rights and responsibilities of a parent for a child who is not their biological offspring. An Adoption creates a legal parent-child relationship between the adoptive parent(s) and the child, severing the legal ties between the child and their biological parent(s) or previous legal guardians.

- 8.4 Adoption creates a lifelong relationship of parenthood between a child and the adoptive. **See the case of Ayat Joy –VS- Genevive Chenekan Obonyo & Another, High Court of Uganda, Adoption Cause No. 052 of 2002.** It provides the adopted child with a psychological and emotional sense of “belonging”.
- 8.5 **Section 45(1) (a) of the Children Act** (as amended) provides that:-  
**‘An adoption order may be granted to a sole Applicant or jointly to spouses where- the Applicant or at least one of the joint Applicants has attained the age of twenty-five (25) years and is at least twenty-one (21) years older than the child’.**
- 8.6 The Petitioner, Anthony Mark Basaba is 46 years and Mary Elizabeth Basaba is 38 years of age. They 1<sup>st</sup> Petitioner presented a National Identification card marked **“B”** and the 2<sup>nd</sup> Petitioner presented a Certification of Vital Records (birth certificate) marked **“B2”**. The child, Walugembe Solomon Isaiah is aged 13 years. Both the Petitioners are 21 years older than the child.
- 8.7 The Petitioners were legally married on 4<sup>th</sup> August, 2012 as indicated in a copy of their certificate of marriage attached to their affidavits in support of the petition and marked **“E”** on the 1<sup>st</sup> petitioner’s affidavit in support of the petition.





- 8.8 **Section 46 (1) (a) and (b) of the Children Act (as amended)** provides that ‘a person who is not a citizen of Uganda may in exceptional circumstances adopt a Ugandan child, if he or she has stayed in Uganda for at least one year and fostered the child for at least one year under the supervision of a Probation and Social Welfare Officer’.
- 8.9 To this end, the Petitioners have formally fostered the child since 6<sup>th</sup> June, 2018 and lived with him at their home in Kubamitwe. The foster care certificate is attached to the 1<sup>st</sup> Petitioner’s affidavit in support of the Petition marked “**J**”. The Probation and Social Welfare Officer further affirmed that the child and the Petitioners appeared before the Alternative Care Panel in September 2020 and March 2023 where they were approved to adopt the child Walugembe Solomon Isaiah.
- 8.10 Accordingly, the Petitioners’ satisfy the requirement to stay in Uganda for at least one year and to foster the child for at least one year under the supervision of a Probation and Social Welfare Officer. The child has been fostered for almost 16 months and both Petitioners’ have lived in Uganda for well over a year.
- 8.11 **Section 46 (c) of the Children Act, Cap 59 as amended** provides that the Petitioners must have no criminal record. The Petitioners’ attached certificates of good conduct from Interpol and Police Clearance Certificates from the Uganda Police Force marked “**PEX N, E2 & F2**” on their affidavits in support of this petition.
- 8.12 **Section 46 (d) of the Children Act, (Supra)** provides that the Petitioners must have a recommendation concerning their suitability to adopt a child from his or her country’s Probation and Welfare Office or other competent authority.



8.13 The Petitioners reside in Uganda and although the 2<sup>nd</sup> Petitioner is an American Citizen, their home is in Uganda and therefore a home study at their home in America would be impractical. The Petitioners' subjected themselves to an evaluation and presented a Home Study Report by the Probation and Social Welfare Officer of Luweero district where they currently reside marked "**L**" on the 1<sup>st</sup> Petitioner's affidavit in support of the Petition.

8.14 **Section 46 (2) of the Children Act, (Supra)** is to the effect that the Probation and Social Welfare Officer referred to in subsection (1) (b) shall be required to submit a report to assist the Court in considering the application; and the Court may, in addition, require some other person or authority to make a report in respect of the application. The Probation and Social Welfare Officer's report is marked "**L**" on the 1<sup>st</sup> Petitioners' evidence. Namigadde Joyce, the Probation and Social Welfare officer, Luweero District prepared a report on the Petitioners and on page 6 of her report recommended that the Petitioners' should be granted an adoption order over the child as his parents, since they will provide him with a good and stable home and environment for growth. The Petitioners' have therefore sufficiently fulfilled this requirement.

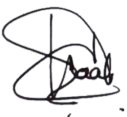
8.15 **Section 46 (e) of the Children Act (Supra)** requires that the Petitioner to satisfy the court that his or her country of origin will respect and recognize the adoption order. The Petitioners' stated under paragraphs 41 and 13 of their respective affidavits in support of this petition that the Government of the United States of America will respect the order of this Honorable Court.



8.16 **Section 46 (6) of the Children Act**, states that inter country adoption shall be the last option available to orphaned, abandoned or legally relinquished children, along a continuum of comprehensive child welfare services. Under paragraph 26 of her affidavit in support of this petition, the child's mother Nyanzi Florence stated that she has eight children and is unable to care for the child financially. That the child has lived with the Petitioner's since 2017 and he is a happy and healthy child. The child's father Kasalirwe Edward, under paragraphs 47 and 48 of his affidavit stated that he cannot fully support the child. He further contended that the Petitioners are the family he has known and that it would be best for him to remain in the custody and care of the Petitioners.

8.17 **Section 47 (1) of the Children Act, Cap. 59**, is to the effect that the consent of the parents of the child, if known, is necessary for the adoption order to be made; but the consent may be revoked at any time before the pronouncement of the adoption order. The parents of the child Nyanzi Florence and Kasalirwe Edward consented to the child's adoption and their signed consents confirming that the adoption should be granted were attached to their respective affidavits. They both stated that they were unable to look after the child and that it was best that he be adopted by the Petitioners.

8.18 It is this court's considered opinion that the Petitioners have satisfied all the legal requirements for inter country adoption of children.



## **9.0 Issue 3. Whether the petition is in the best interest of the child?**

- 9.1 The court's paramount consideration in all adoptions is the welfare of the child in question, their best interests and in as far as possible, their ascertainable wishes. The determination is whether the prospective adopter is a suitable parent is based on a finding that an adoption is in the best interest of the child. The interests of all other parties including the prospective adoptive parents, the biological parents and or anyone else come secondary to those of this child. Walugembe Solomon Isaiah aged 13 is the paramount consideration in this case, his welfare, his future and his very best interests.
- 9.2 **Section 48 (1) (b) of the Children Act (Supra)** is to the effect that the adoption order if made will be for the welfare of the child, due consideration being given to the wishes of the child having regard to his or her age and understanding. **Section 3 of the same act** reiterates this by stating that the welfare of the child shall be of paramount consideration whenever the state, a court, a tribunal, a local authority or any person determines the question in respect to the upbringing of the child, the administration of a child's property, or the application of any income arising from that administration.
- 9.3 **The locus classicus case of Re McGrath (infants) 1893 Ch 143 at 148**, explained that "The welfare of the Child is not measured by money nor physical comfort only. The word welfare must be considered in the widest sense. The moral and religious welfare of



the child must be considered as well as its physical wellbeing. Nor can ties of affection be ignored.”

- 9.4 Walugembe Solomon Isaiah has lived with the petitioners since 2017. He has been cared for and loved by them. The child has developed close relationships with the Petitioner’s children. The Petitioners have celebrated his milestones, provided for his needs and placed him in an environment where he has not only grown but also thrived. This was also evidenced by Family Photos before this court where Solomon is shown to have bonded with the Petitioners’ Children. The Child attends Magezi Christian Academy where he has an opportunity to gain an education. He has found his place, a family where he can grow with those who love and care for him.
- 9.5 The Petitioners’ presented a financial statement marked “**M**” showing that they will be able to financially care for the child. The petitioner receives a salary of 2,200 USD monthly. He has land in Kubamitwe which helps produce food for the family. The Petitioners have a joint account with savings of 20,000 USD. The 1<sup>st</sup> Petitioner also has a retirement account from working in America of 4000 USD. He also has a term life insurance worth 125,000 USD. This provides this court with evidence of the fact that the child will be provided for.
- 9.6 The Petitioners’ further presented evidence through medical reports marked “**O**” and “**G2**” on their affidavits in support of the petition to show that they are in good health and will not endanger the child.
- 9.7 Walugembe Solomon Isaiah has lived with the Petitioners for six years. Six years where he has known love and family. Where he has



been cared for, where he has known sibling love, where he has found his family. The 1<sup>st</sup> Petitioner has dual citizenship, he works in Luweero Uganda where he has gainful employment and land where he derives sustenance. The Petitioners also reside in Uganda next to the child's biological family. The child will be able to maintain his connection to his culture and home. A child of his age requires and deserves the stability provided by the home and parents he has come to know and love.

9.8 In the circumstances and for the above reasons, I find that this Petition has met the conditions for grant of an Adoption Order. I am satisfied that the Petitioners have complied with the legal requirements to adopt the child, and that the adoption is in the best interests of the child.

#### **10.0 Whether the child's name can be changed upon full adoption?**

10.1 In consideration of issue 2 & 3 above, issue 4 on the change of the child's name is resolved in the affirmative. By its very nature, adoption creates a parent-child relationship whereby every parent shall have the right to name their children. The name will solidify the child's sense of belonging in the home and help him Identify with his family and siblings. The court therefore finds that the child's name shall be changed by the adoptive parents upon grant of the adoption order.

#### **11.0 Conclusion**

11.1 The Petitioners have met all the conditions as provided for under **Section 48 of the Children Act, (Supra)** and I hereby allow this



Petition. Accordingly, therefore this petition is granted in favor of the Petitioner with the following orders; that:

1. The Petitioners **ANTHONY MARK BASABA** and **MARY ELIZABETH BASABA** are hereby appointed the adoptive parents of the child **WALUGEMBE SOLOMON ISAIAH**.
2. The Child **WALUGEMBE SOLOMON ISAIAH** is hereby declared the adopted child of **ANTHONY MARK BASABA** and **MARY ELIZABETH BASABA** and the relationship of parent(s) and child is hereby established with all rights and privileges incidental thereto including the right of inheritance.
3. The Parental rights of all others in respect to the child **WALUGEMBE SOLOMON ISAIAH** not previously terminated, are hereby terminated.
4. The Petitioners **ANTHONY MARK BASABA** and **MARY ELIZABETH BASABA** shall have exclusive care, custody and control of the child, **WALUGEMBE SOLOMON ISAIAH** free from claims or hindrances of all others, and shall be held responsible for his maintenance, education and support.
5. The Petitioners' are hereby allowed to change the Child's name upon obtaining the Adoption Order.
6. The Registrar General of Births and Deaths is hereby directed to make an entry recording this adoption in the Adopted Children Register and issue a Certificate in favour of **ANTHONY MARK BASABA** and **MARY ELIZABETH BASABA** in respect of **WALUGEMBE SOLOMON ISAIAH** reflecting the names and parental relationship established herein.



7. This Adoption Order shall be furnished to Consular Department in the Ministry of Foreign Affairs.

8. Costs of this petition shall be met by the Petitioners.

**I so Order.**

***Dated, signed and delivered by email this 17<sup>th</sup> day of November, 2023.***



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**CELIA NAGAWA  
JUDGE**