

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA  
FAMILY DIVISION  
ADOPTION CAUSE NO. 0028 OF 2022  
IN THE MATTER OF THE CHILDREN (AMENDMENT) ACT 2016  
AND  
IN THE MATTER OF ADOPTION OF IMRAN KIGGUNDU (FORMERLY  
MWESIGWA NATHAN) OF BUSEGA – LUNGUJJA ZONE 8, LUNGUJJA,  
LUBAGA-SOUTH, LUBAGA KAMPALA BY SYLVIA KABERA.**

Before: Justice Ketrah Kitariisibwa Katunguka

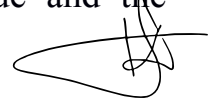
**Ruling.**

Introduction;

1. Sylvia Kabera petitions this court under the provisions of the Constitution of the Republic of Uganda and the Children's Act Cap 59 Laws of Uganda for orders that: an order for the adoption of Imran Kiggundu (formerly Mwesigwa Nathan) be made in her favour with all necessary directions; the costs of the Petition be provided for by the Petitioner; such further and other orders as the nature of the cost may require;
2. The Petition is supported by the affidavit deposed by the Petitioner on the grounds that; the petitioner: is a resident of Busega-Lungujja Zone 8, Lungujja, Lubaga –South, Lubaga Kampala Uganda; a British citizen married to a Ugandan citizen by the names of Kiggundu Isa; holds a Ugandan dependent pass; and is desirous of adopting Imran Kiggundu (formerly Mwesigwa Nathan); she is a self-employed business woman aged 49 years old and is blessed with two biological children to wit- Ntakaye Irene aged 26 years old and Izrin Kiggundu aged 13 years old; she currently stays with Imran Kiggundu (formerly Mwesigwa Nathan) and Izrin Kiggundu; she is not in any way related to the said Imran Kiggundu; has no criminal record from Uganda or any other country; has

been recommended by two people Nakidde Eva a friend of Busega Lungujja Zone and a one Lydia Nabukalu the petitioner's mother also of Busega Lungujja; there is also a letter from Nakawungu Deborah the Local Council 1 chairperson of Gobelo recommending Nabukalu Lydia; as being fit and proper person to adopt the said child;

3. The child is a male Ugandan citizen by birth aged 9 years, a resident of Busega Lungujja who was abandoned on the 4<sup>th</sup> January, 2013 at Grade B hospital Entebbe Municipality; he has not been the subject of an Application or Petition for adoption or an adoption order; this adoption has been consented to by the husband of the Petitioner as required under the Children Act; the said child has been in the actual custody of the Petitioner since he was two months old to date;
4. The child shall be entitled to all properties of the Petitioner and the Petitioner is liable to contribute to his support and welfare; the petitioner has not received or agreed to receive and no person has made or given or agreed to make or give to the Petitioner any payment or reward in consideration of the adoption of the said child;
5. The child has been under the care and generally fostered by the Petitioner the past nine years since the 8<sup>th</sup> day of March, 2013 under the supervision of a Probation and Social Welfare Officer; without prejudice to the foregoing, the Family and Children Court of Entebbe vide Care Order Application No. 012 of 2017 granted the Petitioner care order in respect of the child on the 8<sup>th</sup> November, 2017;
6. The Petitioner enrolled the child at Brain Buttons Grammar School where he is currently getting his education; the Petitioner has fully understood her obligations and rights as an adoptive parent of the child in issue and the



Adoption Order, if made will be for the full benefit of the child and will not in any way compromise his general welfare and wellbeing;

7. The Petitioner has fostered the child under the supervision of Mr. Omar John a Probation and Social Welfare Officer attached to Entebbe Municipality who has recommended the petitioner;

**Supporting documents:**

8. The Petition is also supported by: a copy of the dependent pass and Petitioner's passport bio data page, a copy of the marriage certificate between the petitioner and Kiggundu Isa, a consent to adopt signed by Kigundu Isa, a copy of the certificate of good conduct, a copy of the National Identity card No. CF520521097T3F for Nabukalu Lydia, a copy of residence information in respect of Nakitende Eva, a copy of the National Identity card No. CF77052107LMYL for Nakitende Eva copies of recommendations by Nakidde Eva a friend of Busega Lungujja Zone and a one Lydia Nabukalu the petitioner's mother also of Busega Lungujja; there is also a letter from Nakawungu Deborah the Local Council 1 chairperson Gobelo recommending Nabukalu Lydia, a copy of the form of undertaking, a copy of the adoption report, a copy of the police report by Entebbe Police Station authored by ASP Namugga Hanifah, a copy of abandonment report by Chairperson Lunnyo East subward LC 1 Entebbe to the Director Oasis Children's Home, a copy of Child Assessment Report in respect of Kigundu Imran, copies of school reports of Brain Buttons Grammar School in respect of Kiggundu Imran spanning from 2016 to 2018 and a certificate of completion from the same school, a copy of a foster care order, copies of the school report of Imran Kiggundu and a copy of the Probation and Social Welfare report by Omer John of Entebbe Municipal



Council; and a copy of the adoption order vide FC Entebbe Care Order Application No. 012/2017;

**Representation:**

9. The Petitioner was represented by Counsel Sulaiman Kiggundu who filed written submissions on the following issues;
- .i. Whether the petitioner qualifies to be appointed the adoptive parent of Imran Kiggundu (formerly Mwesigwa Nathan).
  - .ii. Whether the petition is in the best interest of the child.

**Background of the child**

According to a police report dated 13<sup>th</sup> July 2020, on 4/01/2013 the child is stated to have been abandoned at Entebbe Grade B hospital by someone called Nantaba Prossy suspected to be his mother when he was 1 day old; a one Ndalule Betty a nurse working at the hospital reported the matter to police vide REF: SD 53.04.01.2013; Police investigated and found that the child's parents were called Nantaba Prossy and Kityo David both of Kitenge Bwebajja; the baby was placed with Oasis Children Home Seguku; investigations were made and an advert was placed in Bukedde Newspaper on 8/3/2013 and 18/3/2013 to no avail; in 2016 yet another effort with help of the police yielded no results; where he stayed for 7 years the parents were never found;

**Court's determination:**

***Whether the petitioner qualifies to be appointed the adoptive parent of Imran Kiggundu (formerly Mwesigwa Nathan).***

Section 45(1) of the Children Act as amended stipulates that; an adoption order may be granted to a sole applicant or jointly to spouses where (a)the applicant or at

least one of the joint applicants has attained the age of twenty-five years and is at least twenty-one years older than the child; (b) in the case of an application by one of the spouses, the other has consented to the adoption.

**Section 46(1) provides that;** ‘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 a 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 office or other competent authority; and (e) has satisfied the court that his or her country of origin will respect and recognise the adoption order.’ ; while section 47(1) of the Children Act; provides that the consent of the parents of the child, if known, is necessary for the adoption order to be made.

I shall consider each of the requirements to establish whether the petitioners have complied.

As far as the age requirement is concerned, the petitioner a British citizen presented a copy of her Passport No.128181018; showing that she was born on 29<sup>th</sup> of January 1973 making her 50 years of age; in her petition, she avers that the child Imran Kiggundu (formerly Mwesigwa Nathan) was born on 8<sup>th</sup> day of March 2013; the best evidence to prove someone’s age is a birth certificate; however, on record there is no copy of the child’s birth certificate which is vital in adoption proceedings. It is incumbent upon the petitioner to adduce all evidence if she is to be believed; (see: section 101 of the Evidence Act).

**Section 40 (1) and (2) of the Registration of Persons Act, Cap. Act 4 of 2015** stipulates that; “*Any ministry, department, agency or institution, in the exercise of*



*its lawful function, may require production of a certificate of birth and such requirement shall be lawful. (2) Any ministry, department, agency or institution under subsection (1) may, notwithstanding the provisions of any other law for the time being, defer consideration of the service until the certificate of birth of the said person has been produced or other proof that the birth of the person has been registered is provided.”*

The facts of this case show that the child’s biological parents could not be traced; in the absence of a birth certificate, this court is unable to determine the child’s age and his legal identity and citizenship; in the circumstances, the difference in age between the petitioner and the child cannot be ascertained. I find no reason to address the rest of the requirements.

The petitioner being a British citizen ought to have appeared before the National Alternative Care Panel but she did not.

In the premises, this application is dismissed with costs.



Ketrah Kitariisibwa Katunguka  
Judge  
20/04/2023

Delivered by email to; [ajunglecoadvocates@gmail.com](mailto:ajunglecoadvocates@gmail.com).