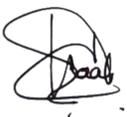


THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(FAMILY DIVISION)
ADOPTION CAUSE NO. 04 OF 2024
IN THE MATTER OF THE CHILDREN ACT, CAP. 59 (AS
AMENDED)
AND
IN THE MATTER OF THE CHILDREN (ADOPTION RULES) SI 59-1
AND
IN THE MATTER OF A PETITION FOR ADOPTION IN RESPECT
OF HASIBANTE TREVOR KELVIN AGED 20 YEARS AND OBARA
ARNOLD AGED 17 YEARS
AND
IN THE MATTER OF A PETITION FOR ADOPTION BY NOELINA
KITONSA

RULING BEFORE: HON. LADY JUSTICE CELIA NAGAWA

1.0 **Introduction.**

- 1.1 Noelina Kitonsa herein after being referred to as the “Petitioner”, petitioned this Honorable Court seeking an Adoption Order for the Children Hasibante Trevor Kelvin (aged 20 years old) and Obara Arnold (aged 17 years old) hereinafter referred to as the “children”.

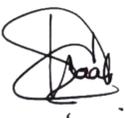


- 1.2 The Petition is brought under the provisions of the Children Act, Cap 59 (as amended), Sections 2 and 45, Rules 3,4,13 and 14 of the Children (Adoption of Children) Rules SI 59-1, Sections 14 and 33 of the Judicature Act and Section 98 of the Civil Procedure Act, Cap. 71.
- 1.3 This petition is supported by three (3) affidavits of Noelina Kitonsa the Petitioner. An affidavit in support of the Petition deponed to on 13th January, 2024 filed together with the petition, a supplementary affidavit deponed to by the Petitioner on 30th January, 2024 and filed on 31st January, 2024 and a second supplementary affidavit filed on 1st February, 2024. All the affidavits contain evidence in favour of the Petition.

2.0 **Representation and Hearing**

- 2.0 The Petitioner was represented by Mr. Evans Rushegyera Tusiime of M/S Pearl Advocates and Solicitors, Kampala.
- 2.1 The children, their biological father His Royal Highness Mr. Obara Robert, Mr. Oron Rapheal Osacha (Senior Probation Welfare Officer- Busia District) were present in Court. The Petitioner appeared online.
- 2.2 Learned Counsel for the Petitioner raised issues for determination by this Court;

- 1. Whether the High Court is seized with Jurisdiction to entertain this matter?**
- 2. Whether the Petitioner qualifies to be appointed the adoptive parent of the children?**
- 3. Whether the Petition is in the best interest of the children?**



4. What remedies are available?

2.3 At the hearing of this Petition, learned Counsel for the Petitioner submitted on the background of Children and the Petitioner. The children filed Statutory Declarations.

3.0 Background of the Children

Hasibante Trevor Kelvin

3.1 He is a male Ugandan citizen born on 1st June, 2003, now aged 20 years old, born at Busumba.

3.2 He is a biological son of Obara Robert and Sauda Habibu (now deceased).

3.3 He attended Lohana Academy for his primary education in Uganda, he later joined Seeta High School of his secondary education.

3.4 Following his mother's demise at a young age, his father introduced him to the petitioner, who has since played a motherly role in his life providing care, material support, protection, guidance and love.

3.5 Ms. Noelina Kitonsa the petitioner now works with the World Bank in Washington, DC in USA and he has lived with her together with his brother Obara Arnold.

3.6 While living in the United States, he studies at Montgomery College and resides with the petitioner.

3.7 He returned to Uganda to have his visa to the United States of America renewed and it was a requirement that for the visa to be renewed, the petitioner had to obtain an adoption order from court hence this petition.



3.8 He supports the petition and unreservedly consents to the petition, since he equally understands the meaning of adoption and he believes that the adoption order shall benefit him with care and other provisions.

Obara Arnold

3.9 He is a Ugandan Male Citizen, born on 16th February, 2006 at Mulago Hospital. At the time of filing this petition he was aged 17 years old.

3.10 He is born to Obara Robert and Sauda Habibu (now deceased) and a young brother to Hasibante Trevor Kelvin.

3.11 He attended Lohana Academy and later joined Seeta High School for his O' Level before traveling to the United States of America in September, 2021 where upon arrival in Maryland he joined Walter Johnson School and the petitioner has been responsible for his accommodation, care, material provisions and all the support.

3.12 He is interested in completing his academics in the United States and pursue a career path as an accountant and a soccer player. He would also like to support his community and family upon his completion of his studies. This is an opportunity that he would not like to lose.

3.13 He filed a Statutory Declaration and therein he consents to the adoption and made averments supporting the petitioner to adopt him. He fully understands the meaning of adoption. He together with his brother and father appeared before the Alternative Care Panel.

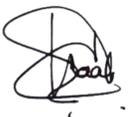


The Petitioner, Ms. Noelina Kitonsa.

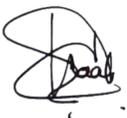
- 3.14 The Petitioner is an adult female Ugandan citizen, a foster parent of the children Hasibante Trevor Kelvin aged 20 years old and Obara Arnold aged 17 years old, over whom she seeks an Adoption Order.
- 3.15 The Petitioner is employed as a Senior Executive Assistant at International Bank For Reconstruction and Development (IBRD), in the department of Global Partnership for Education Secretariat based in Washington, DC, United States under the World Bank.
- 3.16 The Petitioner is a partner of Obara Robert who is the biological father of the children. The children are listed as the Petitioner's dependents household. The biological mother of the children Sauda Habibu is deceased. She passed on as a result of birth complications immediately after giving birth to Obara Robert. Since 2008, the Petitioner has lived with the children's father and cared for them as their mother. She has provided them with Parental love, care, and guardianship and she is the only mother the children have known.
- 3.17 She enrolled the children in school in the United States of America and on all records, intents, and purposes, the Petitioner has been their mother and caretaker.

4.0 Evidence of the Petitioner.

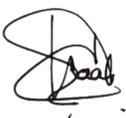
1. The Petitioner is a female adult Ugandan citizen. Attached to her affidavit in support of this Petition is a copy of her National Identity Card marked "**PEX1**".



2. The Petitioner attached the Birth Certificate of Hasibante Trevor Kelvin aged 20 years old born on 1st June, 2003 at Busumba marked **“PEX2”**.
3. Obara Arnold the second child subject to this petition was born on 16th February, 2006 and his Birth Certificate is marked **“PEX3”**.
4. The Petitioner is employed as a Senior Executive Assistant in IBRD, in the department of Global Partnership for Education Secretariat under the World Bank in the United States of America. She attached a copy of her Employment Identity Card is marked annexure **“PEX4”**.
5. The Children are listed as dependents under the Petitioner’s household and this is evidenced on the Petitioner’s verification of Employment by the HR Operations Manager under the World Bank Group marked **“PEX5”**.
6. A copy of the medical insurance enrollment summary for the children addressed to Ms. Noelina Kitonsa in reference to the dependents information marked **“PEX6”**.
7. A copy of the death certificate of the Children’s mother Sauda Habibu marked **“PIDI”**.
8. The Petitioner lives with the child Hasibante Trevor Kelvin who is currently enrolled at Montgomery College his enrollment letter dated 20th September, 2022 is marked **“PEX7”**.



9. The Petitioner resides at 10500 Rockville Pk, 510 North Bethesda, MD 20852 her tenancy agreement is marked **“PEX8”**.
10. Kasibante Trevor Kelvin attended college at Montgomery College and his college academic results dated 21st December, 2023 are marked **“PEX9”**.
11. Obara Arnold’s Certificate of Student engagement for meeting the Montgomery County Public Schools marked **“PEX10”**.
12. The Petitioner presented a Certificate of Good Conduct from Interpol marked **“PID2”**.
13. The Petitioner also presented a Report from the Probation and Social Welfare Officer marked **“PEX11”**.
14. The Children’s father consented to the Adoption. The Consent is marked **“PEX12”**.
15. The petitioner presented an email exchange between Hasibante Trevor Kelvin and his Associate Professor Elaine dated 29th January, 2023 regarding his academic continuation marked **“PEX13”**.
16. A letter from International Admission and Enrollment at Montgomery County Public Schools, marked **“PEX14”**.
17. Email regarding the visa and requirement for an adoption order marked, **“PEX15”**.
18. Letter from Ministry of Gender Labour and Social Development marked, **“PID3”**.
19. Consent by Hasibante Trevor Kelvin marked **“PEX16”**.



20. Consent by Obara Arnold marked **“PEX17”**.
21. A Statutory Declaration by Obara Arnold marked **“PEX18”**.
22. A Statutory Declaration by Hasibante Trevor Kelvin marked **“PEX19”**.
23. Group annexure of 25 photographs and all of them showing the Petitioner interacting, relating and associating with the children marked **“PEX20”**.
24. Statutory Declaration of the father of the children that he lives and stays with the Petitioner although not married marked **“PEX21”**

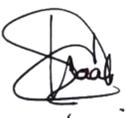
5.0 **Written Submissions.**

- 5.1 Learned Counsel for the Petitioner filed written submissions on 1st February, 2024 and made supplementary oral submissions on 2nd February, 2024. This Court has considered the pleadings, affidavits and submissions in determination of this petition.

6.0 **Resolution of Issues.**

Issue 1: Whether the High Court is ceased with Jurisdiction to entertain this matter?

- 6.1 This is a Petition for an adoption of Hasibante Trevor Kelvin and Obara Arnold by Noelina Kitonsa a Ugandan Citizen who lives and works in the United States of America. The Jurisdiction of this court is provided for under **Section 44(1) (b) of the Children’s Act, Cap 59 and Rule 3(2) of the Children (Adoption of Children) Rules SI 59-1. Section 44 (1) of the**



Children Act, Cap. 59 provides for the Court's jurisdiction in handling matters of adoptions. It 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 otherwise in a case where the applicant is a Ugandan and a child is a Ugandan citizen then the Chief Magistrate court handles the application.

6.2 In this case, though the children and the petitioner are Ugandan citizens, the Petitioner lives and works in the United States of America and she intends for this period of time while working at the World Bank based in Washing DC to continue living in the USA with the Children who are her dependents.

6.3 This court being clothed with inherent power to make such orders as may be necessary for the ends of justice and for the reason that the Petitioner resides and works abroad has unlimited original jurisdiction to entertain this petition. Accordingly, this issue is resolved in the affirmative.

7.0 Whether the Petitioner qualifies to be appointed as an adoptive parent of the children?

7.1 An adoption order is an order made by the court giving parental responsibility for a child to the adopters or adopter. An adopted person is to be treated in law as if born as the child of the adopters or adopter. An adoption order completely terminates any legal relationship between the birth parents and the child.

7.2 An Adoption has been defined to mean the creation of a parent-child relationship by judicial order between two parties who are



not related, the relation of parent and child created by law between persons who are not parent and child. **See 55 Bryan A Garner, Black's Law Dictionary, (9th edition. A. Thomson Reuters Business, 2009) 50.**

7.3 Adoption in effect is the transfer of parenthood from one person to another. It transfers a child from one family to another. It creates a lifelong relationship of parenthood between a child and the adoptive.

7.4 The law on Adoption is set out in the Children Act Cap 59 (as amended) and this court must ensure that the Prospective Adoptive Parent fulfills each one of these requirements while ensuring that the Adoption is in the best interests of the Child.

7.5 **Section 45(1) (a) of the Children Act Cap 59 (as amended)** provides 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 (25) years and is at least twenty-one (21) years older than the child'.

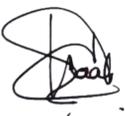
7.6 The Petitioner Kitonsa Noelina is 61 years old and the children are aged 20 and 17 years. This is evidenced by annexures **"PEX1", "PEX2" and "PEX3"** of the Petitioner's Affidavit in Support of the Petition. Indeed the Petitioner is of age to adopt the children.

7.7 Section 45(3) of the Children Act (as amended) provides that; "An adoption order shall not be made in favour or a sole male applicant in respect of a female child, or in favour or a female



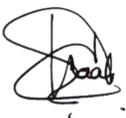
applicant in respect of a male child, unless the court is satisfied that there are special circumstances that justify, as an exceptional measure, the making of an adoption order”. The Petitioner is a female applicant who intends to adopt male children. It was the testimony of the children, their father and the petitioner that she has been in the lives of the children since 2008 and they have lived together although the father was not legally married to the Petitioner. Court is satisfied with the special circumstance to justify the said adoption. The applicant has known and lived with the children for over 15 years.

- 7.8 This court may have to pose and answer the question of who can be adopted alongside this application for adoption. To respond to this question, only a child can be adopted, that is someone who is aged under 18 on the date of the adoption application.
- 7.9 While the Petitioner is both over 25 years of age and over twenty-one years older than the children and this court is satisfied that there are special circumstances under which a female applicant can adopt a male child, one of the subject of this Petition, Hasibante Trevor Kelvin is not a child according to the definition of a child under Section 2 of the Children Act. A child is defined as a person under the age of eighteen years.
- 7.10 The court is cognizant of the fact that socially, Hasibante Trevor Kelvin is still a child under the care of the Petitioner and his father, however, legally, he is an adult who cannot be the subject of an adoption order under the laws of Uganda.



Therefore, the court will continue this Ruling from this point, only concerning the Child, Obara Arnold. In this section of the Ruling, the court will continue to consider whether the Petitioner qualifies to be the adoptive parent of Obara Arnold.

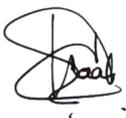
- 7.11 Section 45(4) of the Children Act provides that, the application shall not be considered unless the applicant has fostered the child for a period of not less than twelve months under the supervision of a probation and social welfare officer.
- 7.12 The petitioner is a Ugandan Citizen who has lived with and raised the child together with his father Obara Robert since 2008. The child Obara Arnold, testified that while he was still young he lived and stayed with the Petitioner in various places in Uganda including Namasuba and Ntinda. He testified that since childhood he has known the petitioner as his mother. There has been a relationship and a bonding created between the two individuals.
- 7.13 It is important to note that Section 45(4) has a condition for consideration in an application made to court, the applicant shall have fostered the child under the supervision of a probation and social welfare officer.
- 7.14 The Probation and Social Welfare Officer appeared before this court (PSWO) and testified that he had met the children only four (4) times and these times were; March 2023 when the children lost their grandfather (Mr. Obara Robert's father). The children had come to Uganda to attend the burial. The second time was in Ntinda this year, third time on 31st January, 2024 when they came to court and then the date for the hearing on



2nd February, 2024. He further testified that he had seen the petitioner only once and that was in March, 2023 and he spoke to her once to check on her and the children following the death of their grandfather. The PSWO testified that he was not a total stranger to the children, he was a distant relative to their father, and his step mother was a relative (sister) to the biological father's mother (grandmother to the children).

7.15 The PSWO further informed court that he established from the area Local council leader that both children were born in Mulago Hospital and are natives of Busumba B, village, Busia District and they occasionally stayed in Busia under the supervision of the PSWO. According to the children's birth certificates they were not both born in Mulago Hospital, one was born in Busumba and the Child in Mulago Hospital. In his 2 page report he mentioned the children's deceased mother and her burial place in Busumba. He added that the petitioner had looked after the children and had the financial capacity to care for them. He did not inform court where and how he conducted the supervision.

7.16 This court observed that by the time the report was written, the applicant was away working in Washington, DC and residing in Maryland. The report was dated 4th January, 2024 and the date for social inquiry was made on 3rd January, 2024, the place of social inquiry being Busumba B Village, Dabani Sub County, Busia District. The report reflects that according to the Children Act, Cap. 59 under section 45(5) the PSWO will prepare a report



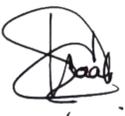
to assist court in considering the application and it is line with that that the report was prepared.

7.17 The Petitioner testified that the children flew out of USA by themselves, she did not accompany them. She testified that the children departed on 15th December, 2023 to return to Uganda. She remained behind. The report was written on 3rd January, 2024 while the petitioner was in the USA. The PSWO further stated that he relied on information and material handed to him by the children's father to prepare the report.

7.18 This clearly indicates that Mr. Oron Raphael Osacha the Probation and Social Welfare Officer did not supervise the petitioner and the child Obara Arnold in Busumba, Busia District as required by law and that he wrote the Report and indeed he testified basing on the information and material provided to him by the father of the child. At page 2 of his report he recommended that an adoption order should be granted to the Petitioner in respect of the Child.

7.19 The PSWO testified that the Alternative Care Panel telephoned him and consulted him about the report that he had presented recommending the child for adoption. Meaning that his report was considered by the Alternative Care Panel.

7.20 Failure by the PWSO to diligently supervise the petitioner and the children before writing the report was a procedural irregularity. The report was written at a time when the petitioner was in Maryland, USA and not in Busia District and this court shall not consider the Probation Social Welfare Report.



7.21 Furthermore, the Petitioner did not appear before the Alternative Care Panel of the Ministry of Gender, Labor, and Social Development. She had no knowledge of the Alternative Care Panel at all. The report indicates that Mr. Obara Robert and the children appeared before the panel on the 23rd day of January, 2024. The PSWO did not appear before the Alternative Care Panel to present the file (report).

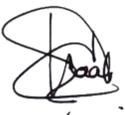
7.22 The background to the file states that;

“The chairperson informed the panel that he received a call from the Permanent Secretary about the technicalities of the panel regarding a visit he got from His Royal Highness of Samia Bugwe who requested the Ministry to receive and review an application concerning the adoption of his children. It was a case of an emergency since one of the boys is turning 18 years of age”.

7.23 The Petitioner presented a Certificate of Good Conduct and a Police Clearance Certificate to prove that she has no criminal record, these were marked **“PID2”**. A certificate of good conduct from Interpol dated 17th January, 2024 and 15th January, 2024 respectively. According to the Petitioner’s testimony she was not in the country and she could not have had any interview with Interpol at that time. Therefore this court will not rely on the certificates attached to the application.

7.24 The Petitioner confirmed that she has not received or agreed to receive any payment or reward in consideration of this adoption.

7.25 **Section 47 (1) and (5) of the Children Act Cap 59**, the parents of the child to consent to the adoption. The Child’s father Obara Robert consented to this Adoption Petition and his



Consent was marked “**PEX12**”. The child also consented to the adoption, he understood the meaning of adoption.

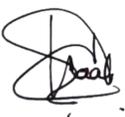
7.26 The PSWO report, that this court has to consider to grant this adoption order and the testimony of the PSWO reflect that supervision was not effectively and efficiently done. Petitioner has not fully meant the requirements and therefore does not qualify to adopt.

8.0 Issue 3. Whether the petition is in the best interest of the child?

8.1 The determination of 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 law requires the focus to be placed on the best interest of the child, rather than the interests of the biological parents, adoptive parent(s) or anyone else.

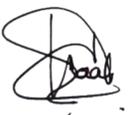
8.2 The court should undertake a holistic, global, examination of the options to find what is best for the child. Setting out the positive and negatives or if you prefer the benefits and determinants of each placement option by reference to the welfare checklist factors is an illuminating and essential intellectual and forensic exercise that will highlight the evidential conclusions and their implications and how they are to be weighed in the evaluative balance that is the value judgement of the court.

8.3 **Section 48(1) (b) of the Children Act (as Amended)** provides that *“The court shall before be making an adoption order be satisfied that the order if made shall be for the welfare of the child, due*



considerations being given to the wishes of the child and due regard being given to his or her age and understanding”.

- 8.4 Regarding the duty to promote the welfare of the child, in reaching any decision relating to the adoption of a child court shall have regard to all circumstances, first consideration being given to the need to safe guard and promote the welfare of the child throughout his childhood; and shall so far as practicable ascertain the wishes and feelings of the child regarding the decision and give due consideration to them, having regard to his/her age and understanding.**(Also see Section 3 of the Children Act),**
- 8.5 I note that, the child is 17 years old and he has consented to the adoption together with his father.
- 8.6 An adoption creates a termination of the biological parents legal relationship with the child. For children too, an adoption can be a paradox. It marks both the beginning and the end of what for many is the core, defininig relationship of their lives- that of parent and child. The adoptive parent becomes the child’s legal parent and is vested with parental responsibility. Parental responsibility is thus transferred from the legal parents to the adoptive parent(s) who stand in relation to the child as if the child had been born their natural legitimate child.
- 8.3 An Adoption order is final and for life as regards to adopters, the natural parents, and the child, the child in this petition turns 18 years in a couple of days and granting this adoption would mean creating a new parent and family for him separate from his brother and terminating his legal relationship with his biological father whom he has known in his childhood. He will



lose this family tie. Since the Petitioner has been a mother to this child in every way except for legally and biologically even without the grant of this adoption she can continue to play this motherly role if she so wishes.

8.7 For that reason, I do not find it in the best interest of the child to grant him this adoption a few days before he attains majority age (adulthood).

9.0 **Remedies available.**

9.1 Hasibante Treveor Kelvin is an adult and can apply for any suitable visa to the United States to continue with his studies if so wishes.

9.2 Obara Arnold is a young adult turning 18 in 4 days' time. He is old enough to apply for a visa as well. An adoption is not in his best interest at the moment.

10.0 Conclusion

10.1 The Petition is denied.

10.2 The child's biological father Mr. OBARA ROBERT shall continue to have Parental responsibility over the Child OBARA ARNOLD.

10.3 The Adoption Order in respect of HASIBANTE TREVOR KELVIN is hereby denied.

10.4 No award to Costs.

I so Order.

Dated, Signed and delivered via email this 12th day of February, 2024.



**CELIA NAGAWA
JUDGE**