

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAM**

MISC. CIVIL CAUSE NO.199 OF 2019

**IN THE MATTER OF THE LAW OF THE CHILD ACT, NO. 21 OF 2009
AND**

**IN THE MATTER OF AN APPLICATION FOR AN ADOPTION ORDER
BY SAMSON NEHEMIA OGUNDE AND MARY SAMSON OGUNDE OF
P. O. BOX 13700 DAR ES SALAAM,**

AND

**IN THE MATTER OF ADOPTION OF SAMWEL AN INFANT OF P.O.
BOX 13700 DAR ES SALAAM, TANZANIA**

RULING

J.L. MASABO, J.:

The Petitioners herein **SAMSON NEHEMIA OGUNDE** and **MARY SAMSON**, has filed a Petition under the Law of Child Act, No. 21 of 2009, seeking for an **ADOPTION ORDER** in respect of an infant by the name of **SAMWEL (Not true name)**. The Petition is accompanied by the following documents: an affidavit of the petitioner verifying the Petition, a chamber summons supported by an affidavit of the petitioner, consent to adoption Order by the Commissioner for Social Welfare recommending the petitioners as suitable adoptive parents; an undertaking by the petitioners as foster parents for the infant dated March 29, 2016; a copy of Certificate of Marriage with No. 0277079 showing that the petitioners are husband and wife, and

copies of national identification cards verifying that the petitioners are Tanzanian nationals. There is in addition, a notification of intent to adopt.

Upon the petition being filed in court and upon receipt of the letter of the Commissioner for Social Welfare nominating one Asha Mbaruku to be guardian *ad litem* for the infant, this court on 12th March 2020 formally appointed the said Asha Mbaruku, a Social Welfare Officer, as *Guardian ad Litem* for SAMWEL and directed her to conduct a social investigation on the suitability of the petitioners. Pursuant to Section 59 (2) of the Law of the Child Act, (supra) and Rule 11 (1) of the Adoption of Children Regulations 2011, GN No. 197 of 2011, the *Guardian ad Litem* has drawn and filed in this court a Social Investigation Report dated 11th May 2020 vide which she supported the Petition. She also gave assurance to the court that the Petitioners are desirous of adopting the infant child with whom they have fostered since 29th March 2016 (about four years and 5 months) and that they are suitable for adoption.

At the hearing of the petition Counsel Cecilia Shiyo appeared for the petitioners who were also present in court. The infant SAMWEL a boy child born on 11th September 2011 was also present. Asha Mbaruku, *Guardian ad Litem*, also appeared and presented her report.

During the hearing, counsel Shiyo having adopted the affidavit filed in support of the petition informed the court that the petitioners are husband and wife, they are over 21 years of age; and are all nationals and residents

of Tanzania. She submitted further that, they have a stable family and income. The first petitioner is self-employed and the second petitioner works as teacher at Ngasera Primary School, a government primary school located in Ilala Municipality in Dar es Salaam. Counsel Shiyo submitted further that petitioners are desirous of adopting SAMWEL with the aim of giving him a permanent home and raise him with love and affection in the same manner as their biological child. She added that, for all the time that the petitioners have hosted SAMWEL, they have loved him and offered him a comfortable home. Based on these, she submitted that the petitioners are eligible and suitable for adoption. She also prayed that, subsequent to adoption order, the court be pleased to order that the adoption order be recorded in the Register for adoption and that the infant SAMWEL be known by a new name of DENIS SAMSON OGUNDE.

Having scanned the application before me and the Social Investigation Report, the brief background surrounding the child as discernible from these documents is that the infant SAMWEL is a boy born on 11th September 2011. He was found around a bush in Sengerema district in Mwanza region having being abandoned by unknown people. He was thereafter placed at FOREVER Children Home in Mwanza for temporary care and custody. Subsequent efforts to trace his parents or relatives ensured but have ended futile in spite of concerted efforts by the police and social welfare Department as per police report dated 8th March 2016. On 29th March 2016 he was placed under the foster care of the Petitioners (As per the letter from Director for Mwanza city with reference No. CS.1/2/16 dated 29th March 2016- appended to the

report) and has since then lived in their home at Moshi Bar Ukonga area in Ilala municipality in Dar es Salaam

I have given due consideration to the pleadings, the Social Investigation Report and oral submission by Counsel during the hearing. Considering that SAMWEL is of 9 years age and capable of forming an opinion, an interview with him was considered to be inconsistent with his best interest. Pursuant to Section 59(1), his wishes were obtained through observation of his interaction with the petitioners and also his interaction with the petitioner's biological children who were in court accompanying him.

Issues for determination are: **First**, whether the infant is available for adoption, **Second**, whether the Petitioners are suitable to adopt the infant and third, **whether** the contemplated adoption is in the best interests Samwel.

Section 57(1) of the Law of the Child Act provides that an adoption order shall only be made with the consent of the parents or guardian of the child. It is this consent that makes the child available for adoption. This requirement can however be dispensed with if the parent, guardian or relative has neglected or persistently ill-treated the child; or cannot be found or is incapable of giving consent. In the instant petition, as alluded to earlier, the infant was found around a bush area at Sengerema district in Mwanza having been abandoned by an unknown person and efforts to trace the parents or any other relative have not been fruitful. To that extent the

requirement for consent in accordance with Section 57 (1) of the Children Act is dispensed with.

Regarding the Petitioner's suitability to adopt the petition is jointly filed by a husband and wife both being Tanzanians and above the age of 21 in compliance with Section 56(1) (a) and (3) (a) of the Law of the Child Act. The first Petitioner Samson Nehemia Ogunde is 48 years and the 2nd Petitioner Mary Samson Ogunde is 41 years. They both have a stable income. The first Petitioner is a business man whereas the 2nd Petitioner is a teacher. Their average monthly income is Tshs 3,000,000/= The petitioners jointly own 4 houses. Three of the houses are rented out and one house situated at Moshi Bar- Ukonga area in Ilala Municipality in Dar es salaam is domiciled by the petitioner's family. They are biological parents to three children namely, Dominica Samson Ugunde, female of 19 years old; Dines Samson Ugunde, female, 14 years and Davis Samson Ogunde who is the youngest. They also have an adult child one Domina Samson (25 years) who lives in Musoma and whose consent was obtained and appended to the social investigation report.

As per the Social Investigation Report, the infant has been under foster care of the Petitioners since 29th March 2016. During all this time they have taken care of his social wellbeing. They have enrolled him in private primary school where he is currently studying in grade IV and they are willing and ready to provide for his future and career development. Although I could not interview the child owing to the reasons already demonstrated above, I observed that

the child is very well integrated in the family. He associated and related well with both petitioners. He also related and associated very well with Davis Samson Ogunde, the petitioner's youngest child who accompanied him in court.

In addition, all the petitioners are of good public standing. They relate well with neighbours and, according to police clearance certificates filed in court in the company of the social welfare report, none of the petitioners have a criminal record.

With the above stated positive social, economic, and emotional standing attributed and or associated with the Petitioners, it is my finding that the Petitioners have met the necessary legal requirements set out under Part VI of the Law of the Child Act, No. 21 of 2009 and that the best interest of the infant child is guaranteed. I accordingly grant the orders

ORDER

The Petitioners **SAMSON NEHEMIA OGUNDE** and **MARY SAMSON OGUNDE OF P.O. BOX 13700 DAR ES SALAAM**, (Kinyerezi, Ilala Municipality in Dar es salaam) **TANZANIA** are hereby **declared** the adoptive parents of a female infant named **SAMWEL** born on 11th September 2011 in Sengerema Mwanza Arusha Tanzania, who after this Adoption Order will be known as **DENIS SAMSON OGUNDE**.

It is further directed that, the Registrar General of Births shall make an entry recording this Adoption Order in the Register of Adopted Children in the appropriate form in terms of the provisions of Section 69 of the Law of Child Act, No. 21 of 2009. In addition, and pursuant to Section 70(1) of the Law of Child Act, No. 21 of 2009 the Registrar General of Births is directed to enter the name of **DENIS SAMSON OGUNDE** in the Register of Births to be marked with the word "ADOPTED" in accordance with Section 70 (4) of the same law. Costs of this Petition shall be borne by the Petitioners. It is so ordered.

DATED at DAR ES SALAAM this 14th day of August 2020.



A handwritten signature in blue ink, appearing to read "J.L. MASABO".

J.L. MASABO

JUDGE