

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

DISTRICT REGISTRY OF MOSHI

AT MOSHI

MISC. CIVIL APPLICATION NO. 21 OF 2020

IN THE MATTER OF LAW OF THE CHILD ACT, 2009

AND

IN THE MATTER OF AN APPLICATION FOR ADOPTION OF

DIAMOND MATEO OF P.O.BOX 283 MOSHI

TANZANIA.....INFANT

AND

IN THE MATTER OF AN APPLICATION FOR ADOPTION ORDER BY:

1. WARREN EARL OBERST AND

2. CHRISTINA MARIE OBERST

OF P.O.BOX 283 MOSHI

.....PETITIONERS

RULING

Last Order:22/09/2020

Date of Delivery: 5/10/2020

MWENEMPAZI, J.

The petitioners herein named, Warren Earl Oberst and Christina Marie Oberst are husband and wife respectively. They are petitioning for an adoption order for an infant, Diamond Mateo. The petition is accompanying the affidavit of

verification of the petition sworn jointly by Warren Earl Oberst and Christina Marie Oberst and the Consent to Adoption order made under Rule 7(1) of the Adoption Rules G.N. No. 164 of 2016.

According to the petition, the petitioners got married on the 23rd of April, 2004. The husband, Mr. Warren is an Administrative Director and the wife, Mrs. Christina Oberst is a Pastor. They are both citizens of the United States of America by virtue of their respective passports No. 562639524(for Mr. Warren Earl Oberst) and 562639523(for Christina Marie Oberst). The copies of the same were annexed to the Report of the Social Welfare Officer and verified during hearing of the petition. Their respective age are 69 years old and 49 years old for Warren and Christina. The petitioners are legally resident of Tanzania, at Soweto Ward, Moshi Municipality, within Kilimanjaro Region.

The infant, the subject of Petition for adoption is Diamond Mateo. She is 13 years old, in that she was born on the 31st July, 2007. This is according to the copy of the birth certificate Serial No. 1736674 dated 6th February, 2013. She is residing at the homestead of the petitioners as they applied to be foster parents and undertook to take care of the welfare of the infant on the 13th December, 2019 as per F.C. Form No. 5 Undertaking by Foster Parents-Annexure 7 to the Social Welfare officer investigation Report). According to the Petition, the infant is a female and her parents are unknown. She was abandoned at Kiboroloni Area since birth and was taken to Mawenzi Hospital and the police Central Moshi and later placed at The Children Home known as TREASURE OF AFRICA in Moshi Municipality. She is currently studying at Hope International School standard VI.

At the hearing of the Petition, the petitioners were being represented by Mrs Elizabeth Maro Minde Advocate and the respondent was Mr. Kiweray J. Macha, Social Welfare Officer for Moshi Municipal Council. The counsel for the petitioners informed the court that the petitioners after they had applied to be foster parents of the infant necessary procedure were carried and as a result the Commissioner for Social Welfare issued a permission to the petitioners to adopt the infant. Simultaneous to the permission the Commissioner appointed Mr. Kiweray J. Macha to be a Guardian Ad Litem of the infant. That is shown in the letter dated 9th April, 2020 with reference No. APPL. No.6059/2017/137. The appointment of Mr. Kiweray J. Macha (SWO) as Guardian Ad Litem and the permission to adopt the infant by the Commissioner for Social Welfare is a sign that the petitioners have fulfilled the pre-condition to apply for an adoption order.

The counsel submitted that the petition has accompanying verification affidavit by the petitioners of the petition and in it they petition undertake to take care of the welfare of the infant, maintain her and educate her if this petition is granted. There is also consent for adoption order by Christina Marie Oberst and also the Guardian Ad litem. The petitioners have no any relation with the infant.

The circumstances of the child, do not need to have consent of the parents under ***Rule 7(1) (b) of Adoption Rules, G.N. NO. 164 of 2016*** as the infant was abandoned since her birth. However, according to the report by the Guardian Ad Litem (Social Welfare Officer) he made visit to the petitioner's home and had an opportunity to talk to the child. She was found progressing well, happy and cheerful and looked healthy. The home is

conducive to the nurturing of the infant and the petitioners have the necessary means for taking care of the welfare of the infant. The Guardian Ad Litem in the report recommends this Court to grant the petition as that will be in the best interest of the infant DIAMOND MATEO to be adopted to WARREN EARL OBERST and CHRISTINA MARIE OBERST.

I had an opportunity to ask for comments of the child on the life and her welfare at the petitioner's home, she was contented and satisfied to be part of the family though she could not comprehend the effect of adoption. That was not an issue as she has never experienced family life apart from care at the Children home.

Upon considering the oral submission by the petitioner's counsel, recommendation by the Guardian Ad Litem and readiness by the petitioners to adopt the infant and that they will provide for all the basic needs and other expenses such as food, shelter, clothes, health care and education at all levels with parental love and care to the infant. I am satisfied that the petitioners have necessary capacity to take care of the welfare of the infant whom I can verily believe she stands a chance to benefit parental care from the petitioners if the Order is issued. The petitioners being foreigners have qualified the test stipulated under section 74 of the law of the Child Act, 2009 and this petition is therefore granted.

ORDER

The petitioners **WARREN EARL OBERST** and **CHRISTINA MARIE OBERST** are hereby authorized to adopt the infant and after the adoption Order **DIAMOND MATEO** will be known as **DIAMOND CHRISTINA OBERST**.

It is further directed that the Registrar General of Birth shall make an entry recording this Adoption in the ADOPTED CHILDREN REGISTER, in the appropriate form set out in the LAW OF THE CHILD ACT.

Finally, the Court order costs of this petition to be borne by the petitioners. It is ordered accordingly.

GIVEN under MY HAND and SEAL OF THE COURT this 5TH October, 2020.




T. M. MWENEMPAZI
JUDGE