

IN THE HIGH COURT OF TANZANIA
IN THE MWANZA DISTRICT REGISTRY

AT MWANZA

MISC. CIVIL APPLICATION NO. 19 OF 2021

FRANCO DAIMA NANYUNYA.....APPELLANT

VERSUS

THE COMMISSIONER FOR SOCIAL WARFARE.....RESPONDENT

RULING

2nd & 30th June, 2021

RUMANYIKA, J

Pursuant to provisions of Sections 74(4)(a) (b) and 75(2)(d) of the Child Act, 2019 and Section 95 of the Civil Procedure Code Chapters 13 and 33 RE. 2019 respectively also the Adoption of Child Regulations, 2011 essentially, the petition is for appointment of a Social Welfare Officer and France Daima Nanyunya and Sandra Meyer – Nanyunya as guardian ad litem and (the 1st and 2nd petitioners) respectively as foster parents of Amani Emmanuel (the child). It is supported by joint affidavit of the said Franco Daima and Sandra Meyer Nanyunya whose contents Mr. Mollohan Kabonde learned counsel for the petitioners adopted during audio teleconference hearing. Ms. Stella Raphael the local Ilemela District Social

Welfare Officer (the respondent) appeared in person. I heard them through mobile numbers 0759176291 and 0753286487 respectively.

Mr. Mollohan Kabonde learned counsel submitted that married, the petitioners resided in Tanzania since 10/12/2016 (copy of the marriage certificate- Annexure Fs1) with lapse of the first three years therefore they qualified with effect from 3/5/2020 also having had been blessed as foster parents by the Commissioner for Social Welfare (Section 58 of Child Act (the Act)) as upon one giving birth the unknown mother just abandoned the child in Geita that the financially able petitioners were willing and ready to adopt the child (copy of the 2nd petitioners' Diamond Trust Bank Account statement – Annexure Fs4). We humbly submit that the child may be adopted in the name of Amani Jonathan Nyanyunya and an adoption order be issued accordingly.

Equally briefly, Ms. Stella Raphael submitted that upon making several follow ups and investigations they were satisfied that the two lovely petitioners had met the threshold therefore able to take care of the child born HIV positive but immediately abandoned by unknown and irresponsible biological mother in Geita much as, irrespective of several and

repeated police follow ups the child's true parents or relatives were not traced. That is all.

The central issue is whether for the best interest of the child the couple Tanzanian and German would be suitable foster parents. The answer is respectfully yes for main reasons; **(a)** it was not disputed that for the previous five years or so the couples had resided and probably worked for gains in Tanzania and were financially able **(b)** according to the respondent who is for that matter herein appointed the child's guardian **Ad litem** with effect from 5/3/2020, in the interim the petitioners had been lovely foster care takers of the child **(c)** the respondent was no doubts employee of the Commissioner who reasonably had no reasons to lie under the circumstances. According to her irrespective of several and repeated follow ups the police Geita having had traced no parents or any one of the the child's blood relatives.

In the upshot the petition is granted with the following orders:- **(i)** the spouse petitioners are in accordance with the Act and the rules/regulations appointed the foster parents of the child **(ii)** the child shall, with effect from the date hereof called and known by the name Amani Jonathan Nanyunya **(iii)** With effect from the date of this ruling Ms.

Stella Raphael is appointed and shall be the child's guardian ad litem. Each party shall bear their costs. It is so ordered.

S.M. RUMANYIKA

JUDGE

30/06/2021

The ruling is delivered under my hand and seal of the court in chamber this 30/06/2021 in the absence of the parties.



S.M. RUMANYIKA

JUDGE

30/06/2021