

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

AT DAR ES SALAAM

MISC. CIVIL CAUSE NO. 147 OF 2022

IN THE MATTER OF LAW OF THE CHILD ACT, [CAP 13 R.E 2019]

AND

**IN THE MATTER OF ADOPTION OF GAUDENSI ELIA ASENGA, A CHILD OF
KIWAMBA STREET, UBUNGO DISTRICT, DAR ES SALAAM REGION**

AND

**IN THE MATTER OF AN APPLICATION FOR ADOPTION ORDERS BY DAVID
SOLZHEN MITALA AND HILARIA JEROME KIMARIO OF COPENHAGEN**

DENMARK

RULING

06th Sept 2022 & 09th Sept 2022

E.E. KAKOLAKI, J.

The Petitioners herein **Hilaria Jerome Kimario** and **David Solzhen Mitala**, are seeking an order for adoption of the child known by the name of **Gaudensi Elia Asenga**. The application is brought under sections 54(1)(a) and (b), 55(1)(a) the Law of the Child Act, [Cap 13 R.E 2019] (the Act), read together with Rule 11 of the Adoption of Child Regulations, 2012, supported by an affidavit of Gilbert F. Lyimo child's blood brother consenting to his adoption by the petitioners. Further to that there is affidavit verifying

the petition duly sworn by one Charles Mutakyawa, advocate, verifying to the court that, the information stated in the petition is true and that the affidavit by Gilbert F. Lyimo signifies his consent to the sought adoption by the petitioners.

Briefly garnered from the petition and its annexures, the child Gaudensi Elia Asenga was born at KCMC Hospital in Moshi, Kilimanjaro region on 30th October, 2004. He is the child of the late Elia Costantine Asenga and Febronia Jerome Shirima who passed away on 20th February, 2018 and 24th July, 2011 respectively. Following the demise of his parents the petitioners started taking care of him and provide him with all necessary needs to make sure that his life goes. The petitioners who are husband and wife are permanent residents of Copenhagen Denmark, as the husband is the Danish by birth born on 11th February, 1957 whereas the wife is a Tanzanian citizen born at Mangwe Village, Rombo District, Kilimanjaro region. The couple are currently employed by IKEA Copenhagen Department of Customer services hence capable of raising income to accommodate all the child's basic needs and all relevant authorities in both countries have cleared them.

At the hearing of the petition Mr. Charles Mutakyawa learned advocate appeared for the petitioners who were also present in court through video

conference, together with the child, a boy born on 30th October, 2004 present in person. On the other side, Ms. Asha Mbaruku, Guardian ad litem to the child was also present.

Submitting in support of the petition, Mr. Mutakyawa sought leave of the court and tendered the certified copies of death certificates of both child's parents and the birth certificates of both the child and Hilaria Jerome Kimario to form part of his submission and proceedings of the Court. The Counsel went on to inform court that, the petitioners have two main prayers before the court namely; **one**, an order to adopt the child, **second**, an order for issue of adoption certificate. He said, he so pray the court as the child Gaudensi Elia Asenga is an orphan for losing both parents on 20/02/2008 and 24/07/2011 respectively. And that, since 2008 when the child lost his father to date, the petitioners took the responsibility of taking care of him in terms of provision of education needs, health care services, food and shelter and all any other necessary needs, thus acting as his biological parents. The learned counsel added, it has always been the petitioners' interest to adopt this child as part of their family and basing on that need and considering the well-being and best interest of the child, it will be appropriate for this court

to grant the petitioners' prayer. He rested his submission by praying the Court to grant the petition as prayed.

On the other side Ms. Asha Mbaruku, Guardian ad litem who conducted the social investigation as required under section 75(2) (d) of the Law of the Child, [Cap 13 R.E 2019] read together with Regulation 11(1) of the Law of the Child Regulation, G.N 197 of 2012, submitted her social investigation report which was already filed in court hence received to form part of the record. She then briefed the court on how the child lost his two parent in 2008 and 2011 before the petitioners took over his care in terms of provision of all necessary needs as explained by the learned counsel Mr. Mutakyawa. She informed the court that, the petitioners herein complied with all the procedures required by the law for adoption of the child and insisted, the petitioners who are husband and wife though from the distance have been taking care of the child since 2011, who has also developed love and bond with them. She said, petitioners know the effect and obligations of adopting a child and have accepted them. She finally implored the court to grant the petition for adoption so as to allow the child to enjoy his right to be raised in a family as petitioners have no child and this will be the only way for them to get their own child and raise him. She further prayed that, if the petition

is granted then the Commissioner for Social Welfare be copied with the ruling for his further action and follow up.

On their part when asked as to whether were aware of the obligations associated to adoption of the child both petitioners were responsive in that, were all heartedly ready to take the child as part of their family and provide him with all necessaries and rights in accordance with the Law of the Child Act.

Having reviewed the petition and the presented evidence in court, there are two issues for determination by the court so as to establish whether this petition meets the requirements of law hence worth for consideration. The issues are:

- (1) Whether the petitioners are willing and capable of taking care of the child.
- (2) Whether it is in the best interest of the child to grant the petition.

To Start with the first issue, this Court is aware that the sought be adopted child has been taken care of by petitioners since 2011 as per the social inquiry report (SIR). It has been proved to the Court's satisfaction that petitioner have reliable and sufficient financial resources to maintain the child

and have been proved to create bond with the child by providing him all of his necessary needs though from the distance. Some of these facts were revealed by the petitioners when interviewed by the Court through video conference. It is also evident that petitioners who are of good age are in need of a child to take care of hence granting them adoption order is opportune for them to raise child as well as for the adopted child to enjoy the right to be loved and raised in a family. This Court is further satisfied that petitioners adhered to all the required procedures for adoption of the child as provided by the law as correctly confirmed by the guardian ad litem and the SIR. Thus first issue is answered affirmatively.

As regard to the second issue on the best interest of the child, in absence of any evidence to contravene the findings of the SIR, this court finds this application to be in the best interest and welfare of the child. I so find as it has been proved to the court that, the petitioners know the effects of adoption as well as their responsibilities towards the adopted child. As it can be gathered from the social welfare social inquiry report (SIR) the child has no one to support him at the moment, hence the petitioners' decision to adopt him as their own child, I find is in the best interest of the child. Thus the second issue is also answered in affirmative.

This court is aware of the mandatory requirement of the law that, an adoption order shall be made with the consent of the parent or guardian of the child as stated under section 57(1) of the Act. In the circumstances of this case guardian's consent was from his blood brother one Gilbert F. Lyimo, hence the law has been complied to the letters.

All said and done, this court is of the finding that, the petitioners have met all the necessary social and legal requirements as set out under Part VI of the Child Act, [Cap 13 R.E 2019]. Henceforth, I grant this petition and proceed to order that:

1. The Petitioners, **Hilaria Jerome Kimario** and **David Solzhen Mitala** are adoptive parents of the child, **Gaudensi Elia Asenga**, a male Tanzanian who is currently residing at Dar es salaam, Tanzania.
2. The Adoption Order be copied upon the Commissioner for Social Welfare for entry of the Adoption Order in the Register of adopted children in terms of the provisions of sections 69 and 70 of the Law of the Child Act, [Cap 13 R.E 2019].

No order as to costs.

It is so ordered.

DATED at DAR ES SALAAM this 09th day of September, 2022.



E. E. KAKOLAKI

JUDGE

09/09/2022.

This Ruling has been delivered at Dar es Salaam today this 09th day of September, 2022 in the presence of Mr. Charles Mutakyawa advocate for the petitioners and Ms. Asha Livanga, Court and in absence of Ms. Asha Mbaruku, Guardian ad litem.



E. E. KAKOLAKI

JUDGE

09/09/2022

