

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC. CIVIL CAUSE NO. 02 OF 2018

IN THE MATTER OF THE LAW OF THE CHILD ACT, 2009

**AND IN THE MATTER OF MOSES OSILIGI MICHAEL, THE CHILD OF P.O BOX
2330, ARUSHA – TANZANIA**

AND IN THE MATTER OF AN APPLICATION FOR AN ADOPTION ORDER BY

MARTINA MAZZUFERI AND GIANLUCA CENTANNI.

RULING

04/11/2021 & 20/01/2022

GWAE, J

The petitioners, Martina Mazzuferi and Gianluca Centanni who are wife and husband respectively petitioned for an adoption of a child known as Moses Osiligi Michael (Hereinafter to be referred to as the child) under section 4 (2) and 74 of the Law of the Child Act, Chapter 13, Revised Edition, 2009 (The Act). However, in the course of hearing of the petition, the Arusha Social Welfare Office presented their investigation report dated 8th July 2019 which was to the effect that the petitioners have not complied with the statutory requirements under section 74 (c) of the Act that he or she has

fostered the child for three months consecutively and 56 (3) (c) of Act which provides for a notification to the Commissioner of Social Welfare of his or her intention to adopt the child.

Due to the noted non-compliance of the statutory requirements by the petitioners this court through its ruling dated 29th July 2019 postponed the determination of the petition meanwhile granted temporary custody of the child for two years under the supervision of the Social Welfare Office in Arusha. It was further ordered that, after the lapse of the period of probation the petitioners were required to come back to court and the social welfare office to prepare a report on the suitability or otherwise of the petitioners to adopt the child.

The probation period having lapsed, on 29th July 2021, the petitioners subsequently appeared before this court being represented by their counsel one Mr. Robert Mgoha assisted by Mr. Aggrey Kamazima who informed the court that the petitioners have complied with the orders given by this court. Nevertheless, they complained that, they were not receiving positive response from Social Welfare Office at Arusha. On inquiry by the court, the petitioner Mrs. Martina Mazufferi informed the court that she is a Government employee having seven years' experience working as a College

teacher while her husband is a banker. The petitioner further stated that they have been so ambitious to adopt the child who is also considering the petitioners as his parents when he appeared on the 5th August 2021 from approved institution, Osiligi Children Foundation-Moivaro area in Arusha.

As per this court ruling dated delivered on the 29th day of July 2019 and court order made on 29th July 2021 as well as per section 74 (4) (b) of the Act, the Social Welfare Officer of Arusha eventually submitted its investigation report dated 4th November 2021. It was one Nivoneia Kikaho, social welfare officer who presented their so-called report which upon my perusal to the said report it has come to my knowledge that, the same was not a report as purported by the social welfare office but rather a mere letter. The letter contained recommendation with the effect that, the petitioners do not qualify to be granted adoption of the child as the Commission and society were not involved in the sought adoption as stipulated under section 75 (1) of the Act, that, the social welfare officer had failed to make close supervision since the petitioners have no permanent residence in Tanzania, that, the petitioners had not gone outside the country with the child despite the fact that they were granted such leave by the court and that, the Office of the Commission is still waiting for the response by the Attorney General (AG).

With outmost due respect to the Social Welfare Office, having carefully perused the complaints raised by the Social Welfare Officer; since the decision of this court dated 29th July 2019 remains unchallenged, therefore, it follows that, the decision is still in force and that the petitioners and staff from the Social Welfare Office ought to have cooperated to ensure that the best interests of the child are safeguarded.

As it has been ruled out by this court in its ruling dated 29/07/2021 that in granting an adoption order the paramount consideration must be to the best interests of the child especially where there are no biological parents as the case here since the child is said to have been abandoned or neglected on the 30th August 2016 by unknown person in the street of Kimandolu area in Arusha Region. He is now at Orphanage Centre. That being the case, I have well-thought-out of the necessity of placing love atmosphere, moral and material security to the petitioners in favour of the child instead of Orphanage Centre. In the circumstances of the case, I feel compelled to abide to a foreign and a persuasive authority of (1984) SCR (2) 795, it was held;

"If for any reason it is not possible to trace the biological parents or any other near relatives to

look after the child or the child is abandoned and it is either not possible to trace the parents or the parents are not willing to take of the child so that the child can grow up under the loving care and attention of the adoptive parents. The adoptive parents would be the next best substitute for the biological parents.....great care has to be exercised in permitting the child to be given in adoption to foreign parents, lest the child may be neglected or abandoned by the adoptive parents in the foreign country or may not be able to provide to the child a life or moral or material security (emphasis mine).”

In our instant petition, the child was abandoned since 2016 and till to date neither his biological parents nor his relatives that have appeared to the court objecting the petition or giving any comment as to the petition. Hence, dispensation with the parents’ consent. The best option, in my view, is to place the child to adoptive parents if willing so though due diligence has to be exercised when granting it to the petitioner who are foreigners.

In determining whether the petitioners’ petition is legally grantable or otherwise, perhaps, it is prudent and sound if relevant section 4 (2) of the Act is quoted hereinunder

“(2) The best interest of a child shall be the primary consideration in all actions concerning a child whether undertaken by public or private social welfare institutions, courts or administrative bodies”.

The same position was judicially emphasized by this court (**Masatti, J** as he then was) in the case of **Re M. (an infant)** (2004) TLR 247 where it was correctly held that;

“Before making an adoption order of an infant the Court must be satisfied that;

- (i) The infant had been in the care and possession of the applicant continuously for at least three consecutive months immediately preceding the date of the order.
- (ii) The effect of an adoption order is to extinguish the emotional attachment and relationship between the parents and the child.
- (iii) The purpose of an adoption order is that it will safeguard and promote the welfare of the child better than the existing arrangement throughout his childhood.

In this petition, this court vide its former ruling delivered on the 29th July 2019 considered the fact that, the petitioners who are foreigners have been so seriously desirous to adopt the child, as their marriage has not been

blessed with any issue. And the fact that they have complied with the order of this court of temporary custody and having carefully considered the additional list of documents including a letter addressed to the General Solicitor indicating the periods the petitioners have spent with the child from 30 January 2018 to 18th March 2020 together with school fees receipts dated 19th July 2021, 11th January 2021 establishing that the petitioners paid school fees for the child at the Bright Future Academy subsequent to the order of the court of 29th July 2019, health insurance expiring on the 15th March 2020 letter written by the petitioners dated 18th March 2020, an application for fostering dated 6th April 2021 and other necessary documents enlisted therein. It is therefore evidently clear that, subsequent to the court's order dated 29th July 2019, the petitioners have been taking necessary steps to ensure that they become the adoptive parents of the child.

As already intimated in the ruling and even upon inquiry by this court the petitioners informed this court that, they are employees and one of them is a Government employee (1st petitioner), for this sake one would not prudently expect for a Government employee or even private employee (2nd petitioners) to have consecutively stayed in the country for at least three years as per section 74 (1) (b) of the Act or three years in Tanzania

physically fostering the child unless section 74 (1) (c) of the Act is ruddily and narrowly interpreted otherwise she or he or both would be compelled to choose to vacating or resigning from their jobs in order their petition to be successfully which, on the other hand, will obviously have negative impacts to the intended welfare of the child.

It is further my view that, it will be in the best interests of the child in the present case if the adoption order is made as it will make it possible for him to have not only a better-quality life but also to have necessary love from the petitioners who have sufficiently demonstrated their good intention to assist him. in this petition for adoption, it is my considered view that, the best interests of the child who was abandoned, picked and sent to police for further action are paramount requiring that, the petition for adoption be granted rather than being dismissed as it is wrongly proposed by the social welfare officer. To my best understanding, the interests of the child will be prejudiced if this petition is refused (See **Re Ongwae and Ongwae (Infants)** (1995–1998) 1 EA 267 and **Re M (An Infant)** [1995–1998] 2 EA 174 (SCU).

I have further keenly examined the documents so annexed by the petitioners especially a letter from the Italian Authority dated 16th November

2020 addressed to the Commissioner followed by the petitioners' request for adoption of the child dated 30th March 2021 and its annexes thereto, the letter to the Commissioner was plainly aimed at notifying the Commissioner of the petitioners' intention to adopt the child. However, all the petitioners' efforts went in vain without any apparent reason but all that, to my decided opinion do not constitute best interests of the child as a human being whose basic needs and the like need to be lovingly and closely cared of.

Being guided by the principle that in adoption proceedings, the best interests of the child are paramount and considering the circumstances such as; that this court postponed the same for two (2) years' period calling for joint efforts between the petitioners and Social Welfare Office in order to safeguard and promote the interest of the child, that, the fact that the petitioners have played their role in conformity with the court's order and undisputed fact that, this matter was initially filed since 2018 as well as the clear fact that, the petitioners have been making close follow ups to have their dream becomes the reality. In that situation unhesitatingly find that there are no further reasons justifying this court to either further postpone issuance of adoption order or dismiss this petition.

Basing on the above reasons, I am therefore of the firm view that, for the sake of justice and to the best interests of the child who, under these circumstances, needs parental love and care and considering the readiness of the petitioners to adopt the child and provide him with the basic needs including food, shelter, health care and education. I am therefore satisfied that the petitioners have demonstrated capacity/suitability and willingness to take care of the welfare of the child and equally the child to benefit parental care and love from the petitioners.

Consequently, the petitioners' petition is granted, by virtue of section 54 (1) (a) read together with section 74 and 74 (2) of the of the Act, I hereby issue an adoption order in respect of the child, **Moses Osiligi Michael** in favour of the petitioners, **Martina Mazzuferi** and **Gianluca Centanni** and make the following orders for compliance;

- i. The adoption order for the child **Moses Osiligi Michael** is hereby granted to the petitioners.
- ii. That, the best interests of the child are now placed to the petitioners as adoptive parents till, he attains the age of majority or he becomes self-independent
- iii. That, the child will henceforth be known as **Moses Centanni** instead of **Moses Osiligi Michael**.

- iv. The Register-General of Birth is hereby directed to make an entry to the register of Adopted Children as per section 69 (1) of the Law of the Child
- v. This adoption order issued by the court shall be served on the Registrar-General by the Deputy Registrar of the court within thirty days of the making of the order pursuant to provisions of section 69 (2) and 70 of the Act.
- vi. The Petitioners are now adoptive parents who shall notify in writing the Commissioner of Social Welfare if they desire to send the adopted child out of the country permanently or temporarily after this adoption order as required under section 73 (1) of the Act.
- vii. Costs of this application to be borne by the petitioners.

It is so ordered.



M. R. GWAE
JUDGE
19/01/2022