

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(ARUSHA DISTRICT REGISTRY)  
AT ARUSHA**

**MISC. CIVIL CAUSE NO. 20 OF 2022**

**IN THE MATTER OF THE LAW OF THE CHILD ACT (CAP 13 R.E.2019)**

**IN THE MATTER OF MERCY MAJID KIKOMBO AND MARY MAJID  
KIKOMBO**

**[TWIN INFANTS OF P.O. BOX 2780 ARUSHA – TANZANIA]**

**AND**

**IN THE MATTER OF AN APPLICATION FOR ADOPTION ORDER BY  
MAYASA SALEHE MHINA – PETITIONER**

**RULING**

*Date of last order: 14/12/2022*

*Date of Ruling: 17/02/2022*

**BADE, J.**

The Petitioner, Mayasa Salehe Mhina, lodged this petition seeking for an adoption order in respect of twin infants Mercy Majid Kikombo and Mary Majid Kikombo, the adoptive children. The petition is accompanied with an affidavit sworn by the Petitioner verifying the same and copies of the Petitioner's birth certificate, copy of national ID and a letter from the Department of Social Welfare under the then Ministry of Health and Social Welfare, Gender, Elderly and Children dated 3<sup>rd</sup> April 2018 allowing the Petitioner to foster the adoptive children are attached thereto. At the hearing of this

petition, the learned Advocate Robinson Makundi appeared for the Petitioner . The Social Welfare Officer, Ms. Nivoneia Kikaho, the Petitioner Ms. Mayasa Salehe Mhina and the fostered children (Mercy Majid Kikombo and Mary Majid Kikombo,) attended at the hearing of this petition.

The contents of the petition and the submissions made by the learned advocate Mr. Makundi during the hearing of this petition, put into light the following factual position; That the Petitioner, Ms. Mayasa Salehe Mhina is a female Tanzanian, born on 31st January 1973 in Handeni Tanga. She is desirous of adopting Mercy Majid Kikombo and Mary Majid Kikombo, twin infants who are believed to be born on 9<sup>th</sup> June 2016 and thus are approximately six years of age. The where about of their biological parents are unknown.

The Petitioner sought and obtained approval from the Commissioner for Social Welfare (through a letter dated 03/04/2018) to take custody of the twin infants. Thus, since October 2020 the twin children have been under the custody of the Petitioner. The adoptive children have not been the subject of an adoption order or of an application or petition for adoption. If this petition is granted, the Petitioner undertakes to take care of the twins Mercy and Mary, provide for their maintenance and education. The Petitioner has not received or agreed to receive or promised any reward in consideration of the adoption of the adoptive children. The Petitioner requests the adoptive children to be known by the names of Shadya Shaaban Mhina (Mercy); and Nadya Shaaban Mhina (Mary) in the event this petition is granted.

The Commissioner for Social Welfare, appointed Ms. Nivoneia Kikaho, a Social Welfare Officer to be the *Guardian ad Litem*. The Social Welfare Officer prepared her expert report and filed it in Court.

The Social Welfare Officer's report reveals that the Petitioner is a mathematician who is now employed as a Site Manager of Chanzi Limited, which is a company that produces protein for animals. She has a stable income capable of taking care and providing for the maintenance of the adoptive children. She is single and enjoys a happy life with her relatives. She has been fostering the adoptive children for almost two years now since October 2020. She loves the twins very much and spends most of her valuable time with them. Moreover, the report states that the Petitioner is ready, happy and willing to adopt Mercy and Mary and take on this lifelong responsibility. The Petitioner understands that if this petition is granted, she will assume full responsibility of the adoptive children. This includes but not limited to the care of the adoptive children basic needs, medical, spiritual and educational needs.

Upon being invited to address the Court, Ms. Kikaho prayed to adopt the contents of her expert report and upon probing by the Court, she explains that the twins and the Petitioner are well acquainted, and have good environment at home. They have full time carer for when the Petitioner is at work. They are already attending kindergarten at Arusha Alliances at the Petitioner 's expense. She invited this Court to grant the petition. Being the one who was making the follow up on the welfare of the twins Mercy and Mary, Ms. Kikaho told this Court that she was confident that the Petitioner is a suitable person to adopt the twins Mercy and Mary. She earnestly believes that the petition has been

made in good faith, and that granting the same is for the best interests and welfare of the adoptive children.

Upon perusal of the file, this court made observations that the report was silent on the birth details of the adoptive twin children, and there were no documents evidencing parental/guardian consent of the relatives of the twin children. The Court thus resummoned Ms N. Kikaho, the Social Welfare Officer who was appointed as the Guardian Ad Litem for the twin children on this adoption petition to address the court and file supplemented information on a) the birth details of the twin children including their birth certificates b) any report on the circumstances of the birth, upbringing and or parentage of the twin children, and c) Consent or dispensation with the consent of the biological parents or guardians if any.

In compliance with the court order the Social Welfare Officer furnished the said information on filed supplementary report, for which I am obliged to thank the Social Welfare Officer for her efforts and keenness.

This Court is thus implored to determine the following issues; one, whether the Petitioner qualifies to be granted the adoption order sought; and two, whether it is in the best interests of the children to be adopted as petitioned, and lastly; to what reliefs are parties entitled to if any.

I have dispassionately analyzed the submissions made by both the learned Advocate Makundi and the Social Welfare Officer; as well as the contents of the petition. Not only that, I had an opportunity to talk

to the twin children, who were not shy and very forthcoming. They looked confident and trusting and were able to respond to all of the questions that the Court posed to them. The children looked physically fit and mentally sharp. While responding to some of the questions I posed to them, they told me that the Petitioner is their mama (pointing to the Petitioner) and that she stays with them. Both girls appeared trusting and confident in the way they were responding to my questions. It is this Court's finding that the twin children demeanor and deportment was assumptively a proof that they have been receiving good care from where they live or being taken care of. According to the Guardian ad litem report, the children have been fostered for the past two years by the Petitioner; which is in line with what has been stated in the Social Welfare Officer's report.

Moreover, this court had the opportunity to probe and dialogue with the Petitioner herself particularly on whether she understands the reciprocal legal rights and duties existing between herself and the children, and her responsibilities in the event this court grants her the adoption order. Her response were quite satisfactory including on issues of responsibilities on education. She is well aware of her responsibilities to build the children in spiritual awareness and otherwise, assumptions and relinquishing of legal rights. She is also aware of the adoptive children attached legal rights to her as a parent if she is granted the adoption order. It showed that the Petitioner understands her responsibilities very well.

Starting with the first issue, I hasten to say that the Petitioner qualify

to be granted the adoption order. As I have alluded herein above the Petitioner is a female, adult, Tanzanian. I have no reason to doubt the expert report filed by the Social Welfare Officer which is in favor of the petition. The report looked on several aspects of the suitability of the Petitioner including her financial status, health condition which is mental and physical, her availability to accommodate the children within her own life style and physical space. The Petitioner herself responded credibly well to the questions posed to her by this Court during the hearing of the petition, which is a further assumptive proof that she is ready and capable to take in the adoptive twin children. In furtherance of her intentions, the Petitioner has also complied with all the required legal procedure to be granted the adoptive order. So, I answer the first issue affirmatively.

Regarding the second issue, the position of the law basing on the paramountcy principle, which is set out in the law of the Child Act No 21 of 2009 RE 2019 is that an adoption order issued by the Court need to be in the best interest and welfare of the child. Looking at the background of the twin children, I am convinced that granting the adoption order shall be in the best interest of Mercy and Mary. According to the filed report, the twin Children were orphaned at birth as their biological mother passed away during labor.

The Guardian ad Litem report clarifies that even though the twin children do have some biological relatives, they are either unable or unwilling to take parental responsibilities over the twin children upon passing of their biological mother. No father has come forward to claim



them since they were left at the orphanage Centre, first at Nkoaranga hospital where they were first brought and left, and later moved to the Neema Village Orphanage. Their grandmother (Paulina Kaanaeli) is the only recorded biological relative, who was unwilling to keep the twin children due to her family situation, financial position and health condition due to old age.

The report also records that while processing the adoption petition, as is the requirement of the law, the Office of the Social Welfare spent time and resources to trace the biological relatives of the twin children once again to find if they are willing to take the children for upbringing, or consent to the said adoption; but this time they were untraceable. Under section 57 (1), (2) and (3) of the Law of the Child Act No 21 2009 RE 2019 this Court is empowered to dispense with the consent if circumstances such as above present.

In her opinion, the Guardian ad litem urges that the twin children will do better in the family setting that the Petitioner is offering these children as their welfare is better taken care of. These twin children have been fostered by the Petitioner for over two years now, and for all the time they have been under the custody of the Petitioner they have been happy and stable, enjoying family life with the Petitioner and have been enrolled to school (kindergarten).

The report of the Guardian ad litem highly recommended the Petitioner for being able to provide for the welfare of the children during the fostering period since she has a stable income thus capable of providing for the necessities of the twin children; but more importantly

her willingness to adopt the twin children as her own and take care of them for the balance of her life. She not only does provide for them, but understands her responsibility to provide for the children even if her financial situation were to change. I thus answer the second issue affirmatively.

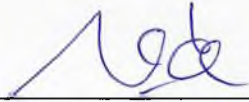
On the final analysis, this petition is granted. I hereby order as follows:

- i) The Petitioner **MAYASA SALEHE MHINA** is hereby granted and authorized to adopt the twin children (Mercy Majid Kikombo and Mary Majid Kikombo).
- ii) On the grant of the Adoption Order **Mercy Majid Kikombo** is now known by the names **Shadya Shaaban Mhina**.
- iii) On the grant of the Adoption Order **Mary Majid Kikombo** is now known by the names **Nadya Shaaban Mhina**.
- iv) It is hereby directed that the **Registrar General of Birth** shall make an entry to that effect in the **Register of Adopted Children** pursuant to section 70 (1) of the Law of the Child Act No 21 of 2009 Cap 13 RE 2019.
- v) Costs of this petition shall be borne by the Petitioner.

**It is hereby so Ordered**

Dated in **Arusha** this **17<sup>th</sup>** day of **February 2023**





**A.Z BADE**

**JUDGE**

**RULING** delivered in **Arusha** before the parties this **17<sup>th</sup> day** of  
**February, 2023**



**A. Z. BADE**

**JUDGE**