

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

MISCELLANEOUS CIVIL CAUSE NO. 3117 OF 2024

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

IN THE MATTER OF LIAM APRIL

[INFANT CHILD OF P.O. BOX 3064 ARUSHA – TANZANIA]

AND

IN THE MATTER OF AN APPLICATION FOR ADOPTION ORDER

BY THE PETITIONERS

JOSEPH ELDDAD RUTOGOMBA

AND

MAGDALENA ANTHONY NDERUMAKI

RULING

07/03/2024 & 08/04/2024

BADE, J.

The Petitioners, **JOSEPH ELDDAD RUTOGOMBA** and **MAGDALENA ANTHONY NDERUMAKI** lodged this petition seeking an adoption order in respect of a male infant **April**, (who shall throughout this Ruling, referred by only this one name for privacy purposes,) the adoptive

child. The petition is accompanied by a joint affidavit sworn by the Petitioners verifying the averments in the petition; and copies of the Petitioners' birth certificates, a copy of the marriage certificate, copies of their national IDs, and letters from the Commissioner for Social Welfare under the Ministry of Community Development, Gender, Women and Special Groups dated November 12, 2022, January 20, 2023 and November 08, 2023 which are letters for identification of an adoptee, Leave for fostering a child and Consent to Adopt a child.

At the hearing of this petition, the learned Advocate Martha Lyimo appeared for the Petitioners. The Social Welfare Officer, Ms. Nivoneia Kikaho, who acted as the *guardian ad litem*, and the Petitioners Mr. Joseph Eldard Rutogomba and Mrs. Magdalena Anthony Nderumaki attended the hearing of this petition. Previously, I had allowed the Petitioners to desist from bringing to court the fostered infant (Baby April) having been satisfied in viewing and observing the presence of the infant baby adoptee.

The contents of the petition and the submissions made by the learned advocate Ms. Lyimo during the hearing of this petition, put into light the following factual position; that the petition is set forth for hearing having been presented under sections 64 (1) (a) and 55 (1) (a), of the

Law of the Child, 2009 and Regulation 11 of the Adoption of the Child Regulations, 2011. The Petitioners intend to adopt and are thus seeking an adoption order for an infant child April.

The learned counsel submitted that the joint Petitioners are a married couple who live in Kikwakwaru, Lemara area in the District and Region of Arusha. She intimates that Joseph, the husband, was born on 14/09/1974, in Kigoma while Magdalene the wife, was born on 29/12/1972 in Arusha. They were married in Kigoma TAG Church on 27/12/2015, which makes their union in marital life 9 years old. Also, the joint Petitioners are both Tanzanian by birth as exhibited by their birth certificates and National IDs which were annexed in their Petition. Joseph is a Pastor and a farmer, undertaking his farming activities in Babati. Magdalene on the other hand is a Childcare expert in an organization identified as Compassion International Tanzania. Throughout their union in matrimony, they are yet to be blessed with biological children.

The child that is intended to be taken in for adoption is an infant child April, who is a male child and was born in Tanzania on April 6, 2021. He was being fostered at the Cradle of Love Baby Home and he is not related by blood to the Petitioners. The counsel intimates further that

the whereabouts of the parents or any relatives of the child are unknown. The joint petitioners have been living with the baby in Kikwakwaru in the Lemara area, Arusha since January 20, 2023, when they were allowed to stay with him as foster parents. They are taking care of the child including all its needs.

The permit to allow the couple to find and identify a baby for adoption was issued by the Commissioner for Social Welfare on November 12, 2023, and the leave to take in the baby Liam for fostering to the joint petitioners after identifying him was issued in January 2023. The adoption permit after the fostering leave was issued on November 8, 2023. All of these facts have been verified through the joint affidavit accompanying the petition.

The learned counsel Ms. Lyimo informs the court further that there has not been any pending litigation in respect of any objection registered against the present petition for adoption of the infant child, neither is there any pending application in a court of law to adopt this infant child, nor any interest or payment by any person to adopt this infant child. The learned counsel further adduced that the joint petitioners have never been criminally convicted nor had they recently been subjected to a bankruptcy order. They are good citizens and are

properly fitted to be adoptive parents. In conclusion, she intimates her prayers from the Joint Petition for this court to order:

1. The joint Petitioners be approved and granted to adopt the child infant Liam April as per the Law of the Child of 2009, RE 2019; and
2. The infant child be renamed XYZ; (name withheld for privacy purposes); and
3. The adoption order be registered with RITA so that the Adoption Register would be entered with the names of the adoptee and the adopted parents.

This court took time and prompted the Social Welfare Officer who intimated that the details of the biological parents of the child are not known due to the historical fact that the infant was an abandoned baby, and so his whereabouts prior are unknown. He was being fostered by the Cradle of Love Baby Home from the time he was born and abandoned/picked up by good Samaritans and cared for at the Babies Home mentioned.

The Social Welfare Officer also made an investigation on the social, economic, and health welfare of the adoptive parents and is satisfied that they are good people who can become adoptive parents of the

baby child, as evidenced by the Permits for the said adoption as issued by the Commissioner for Social Welfare., which preceded two other permits to first identify the baby, where they found the baby, April, after which they were allowed to foster him from January 2023 to date.

In executing her duties as *guardian ad litem* Ms. Kikaho intimated that she had been visiting the foster parents and the child in their foster home and was quite satisfied with the three visits within the year of fostering the baby, observing that the child had good progress, enjoying good health, and had well adapted to the foster family. She also observed that the petitioners had arrangements to have a full-time carer at home taking care of the baby; who was looking after the child quite well catering for all his needs since both petitioners are working outside the home.

The court also probed the Petitioners themselves and have both responded credibly to the questions posed to them during the hearing of the petition, with a view of establishing that they are both ready and capable of taking in the adoptive infant child. The petitioner Mr. Joseph Rutogomba while inquired by the court, promptly responded with his awareness of the petition before the court indicating that they had both intended to do this adoption with his wife and had been keenly

following up on the process of legally finding the baby, as guided by the experts at the relevant places, and found this baby at the Cradle of Love Baby Home. He also explained how they are enjoying their stay with the baby at home and that they are at this stage praying for the court to grant the petition and make him and his wife parents, so they can both continue to offer their love and affection to the baby.

On further prompting, he inveterate his awareness that He will have the rights of the father and that he shall have the baby as his own. And on the other hand, the child will have the right to inherit from their joint estate. He also confirmed his awareness that he will have to cater to this child in all his rights as if the child was biologically his, that all rights of the child will be extinguished except arising from himself, and that the child will have to obtain from him spiritual, physical and social upbringing, and that the child would be integrated into his family as a member of his family.

Prompting the second petitioner Mrs. Magdalene Nderumaki, she confirmed her prayers to exercise the right to adopt this child with her husband, with whom they jointly petitioned the court. She was prompt in confirming her awareness of the rights that the child would be entitled to have with them as parents, eagerly intimating that they had

already integrated this child into their family, and were committed to giving the child all the love and care that he needs. She also confirmed her awareness that the child will have the right to inherit from them and that any other rights on the child from any other person shall be extinguished if the adoption order is granted. Moreover, she confirmed their commitment to providing the child with all the spiritual, physical, and social guidance and upbringing.

I have dispassionately analyzed the submissions made by both the learned Advocate Lyimo and the Social Welfare Officer; as well as the contents of the petition and its attachments. Not only that, I had an opportunity to observe the infant child, who looked sharp and very forthcoming. The infant was cuddled along by one of the joint petitioners throughout their stay in the chamber court where he looked comfortable, physically fit, and mentally alert.

I am of the view that the issues needing consideration and determination here are three, whether the petitioners are suitably qualified to be granted an adoption order; and secondly, whether it is in the best interest of the infant child that the adoption order should grant, and if these two are affirmed, then whether the infant child name should be changed into the proposed names.

Considering the first issue, I had directed my mind to look at the enabling provisions of the law, Sections 52 and 55 of the Law of the Child Act, 2009 R.E 2019, Adoption of the Child Regulations, GN 197 of 2011 and Foster Care Placement Regulations 2012 GN No. 155 of 2012, all of which prescribe some conditions for the grant of the adoption order regarding suitability of the petitioners including the age of the adopters, their citizen status, marital status, their place of abode, criminal record, the fostering requirement, financial capability, and the recommendation of the *guardian ad litem* through filing of the Social Inquiry Report.

As it has been alluded herein above the Petitioners are a married couple, both of whom are Tanzanians, and have been married for 9 years. There are documents verifying all these facts. The Court has ascertained that they both have consented to the adoption of the infant child. There is enough proof that they offer a stable environment to the adoptive infant child as elaborated in the *Guardian ad litem* report. This is despite the fact that both petitioners are above fifty years of age, considered against the age of the child, and the best interest in the welfare of the child.

Observing the child as he was presented together with the petitioners

in court, it is my finding that the infant child's demeanor and deportment were assumptively proof that he has been receiving good care from where he lives and being taken care of. According to the *Guardian ad litem*, the child has been fostered for the past year by the Petitioners; which is in line with what has been stated in the Social Welfare Officer's inquiry report filed in court.

Moreover, I had the opportunity to probe and dialogue with both Petitioners individually and as a couple, particularly on whether they understand the reciprocal legal rights and duties existing between themselves and the adoptive child, and their responsibilities in the event that I grant them the adoption order. Both their responses were quite satisfactory including on issues of responsibilities in proper upbringing and education. They are both aware of their responsibilities as adoptive parents to build the child in spiritual awareness and otherwise, their assumptions of specific legal rights as well as relinquishing some of the legal rights on the child. Further, they are both aware of the adoptive child's attached legal rights to them as parents if they are granted the adoption order. To be specific these include permanent and closed future custody, maintenance, and education of the child, particularly all rights to appoint a guardian and

to consent or give notice of dissent to marriage later in life, as well as the right by the adopted child to inherit in intestacy in respect of any real or personal property of the adopters/ petitioners.

The Petitioners are also aware that all these rights, duties, obligations, and liabilities shall vest in and be exercisable by and enforceable against the adopters as if the child were a child born to them as adopters in lawful wedlock if the adoption order is granted. I am satisfied that the Petitioners are aware of and understand their duties, rights, and responsibilities well enough.

Coinciding with the foregoing analysis against the first issue, I hasten to say that I am convinced that the Petitioners have well passed the suitability test and thus would qualify to be granted the adoption order. So, I have no hesitation in answering the first issue affirmatively.

However, that said, the second issue is still calling. This is whether it is in the best interest of the child for the adoption order to grant.

In deliberating regarding the second issue, the position of the law based on the paramountcy principle is set out in law as per the Law of the Child, Cap 13 Act No 21 of 2009 RE 2019 whose section 59 is

prescriptive that an adoption order issued by the Court needs to be in the best interest and welfare of the child. The section provides:

"59.-(1) The court shall make an adoption order if it is satisfied that:

(b) it is in the best interest of the child and that the wishes of the child have been considered if the child is capable of forming an opinion"

This is replicated again in the Adoption of the Child Regulations, GN 197 of 2011, whose Regulation 3 provides:

"3 (1) The Court before making an adoption order shall be satisfied that:

the order if made will be for the welfare of the infant, due consideration being for this purpose given to the wishes of the child, having regard to the age and understanding of the child"

Expounding further on the paramountcy principle, according to **Bromley's Family Law**, 8th Edition, at Page 336,

"...the children's welfare is the court's sole concern, and other facts are relevant only to the extent that they can assist the court in ascertaining the best solution for the child...."

In ascertaining the best interest of the child, I had read in detail the confidentially filed expert inquiry report. The report filed by the *Guardian ad litem* looked at several aspects of the suitability of the Petitioners including their financial status, health conditions which are mental and physical, and their availability to accommodate the child within their lifestyle and physical space. All of these facts work to test the paramountcy principle in favor of the child.

On the other hand and among other things, I had dispassionately probed the Petitioners and am satisfied that the Petitioners were not motivated in any manner and by any payment or other reward in consideration of the adoption, and that they both consented to undergo this process and adopt this child. So in furtherance of their intentions, the Petitioners have had to comply with all the required legal procedures to make them eligible to be granted the adoption order, including providing 3 referees' names. All the referees have positively recommended the Petitioners, showing confidence in their good reputation, good marital relationship, and hard-working ethics, and proclaimed faith in supporting the child's rights.

This information on the referees' recommendation is well found in the *Guardian ad litem* report and I have no reason to doubt the expert-

inquired report filed by the Social Welfare Officer which is in favor of the petition.

I have also considered the background of the infant child, I am convinced that granting the adoption order shall be in the best interest of Baby April. According to the filed inquiry report, the infant child was abandoned at birth and his biological mother has never been traced. The *Guardian ad Litem* report clarifies that the infant child has no biological relatives or anyone else willing to take parental responsibilities over the infant child.

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 once again trace the biological parents of this male child to find if any biological parent exists and to consent to the pending adoption; but none was traceable. 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, as I hereby do.

In expert opinion, the *Guardian ad litem* urges that the child will do better in the family setting that the Petitioners are offering this child as

his welfare is better-taken care of. This baby has been fostered by the Petitioners for over a year now, and for all the time he has been under the custody of the Petitioners he has been steadily growing in a stable home, enjoying family life with the Petitioners.

The report of the *Guardian ad litem* recommended the Petitioners for being able to provide for the welfare of the children during the fostering period since they not only have a stable income thus capable of providing for the necessities of the infant child; but more importantly, their willingness to adopt the infant child as their own and take care of him for the balance of his life, opining that they not only do provide for him but understand their responsibility to provide for the infant child even if their financial situation were to change. I thus answer the second issue affirmatively, that it is in the best interest of the child for the adoption order to grant.

Now, should the petitioners be able to name baby April to the name of their choice? This is also answered in the affirmative since the adoptive parents are entitled to all natural rights of the biological parents once an adoption order has grant. Baby April being an infant child makes even more logical sense. In any sense, the option to rename the adoptee is inherent in the legal framework governing the making of an adoption order as the law in Subsections (1) and (3) (b) of section 70

of the Law of the Child Cap 13 provides:

An adoption order made by the court shall contain a direction to the Registrar-General to make an entry in the Register of Adopted Children in the form set out in the Schedule to this Act;

(3) For the purpose of compliance with the requirements of subsection (1), where:

(b) the name or surname which the child is to bear after the adoption differs from his original name or surname, the new name or surname shall be specified in the order instead of the original;

In my view, since the paramountcy principle is what should guide the court in granting the order for the adoption of a child, all aspects should be considered with this issue in mind. Renaming a child could mean better integration into the family of the adoptive parents. It could also mean practical benefits to the life of the adoptee as well as ease any transitions and bonding into the new relationships that shall be formed.

On the final analysis, this petition is allowed. Consequently, an

Adoption Order is **granted** with the following details:

- i) The Petitioners **JOSEPH ELDAD RUTOGOMBA** and **MAGDALENA ANTHONY NDERUMAKI** are hereby (as per Sections 59 of the Law of the Child Act, Cap 13) **jointly granted** and **authorized** to **adopt** the infant child **BABY APRIL**.

- ii) The infant Child **BABY APRIL** is declared an **ADOPTIVE CHILD** of **JOSEPH ELDAD RUTOGOMBA** and **MAGDALENA ANTHONY NDERUMAKI**. Consequently, the relationship of parents and child is hereby established with all rights, duties, responsibilities, and privileges incidental thereto.
- iii) The Petitioners **JOSEPH ELDAD RUTOGOMBA** and **MAGDALENA ANTHONY NDERUMAKI** are hereby declared the **ADOPTIVE PARENTS** of the infant child **BABY APRIL**, and shall have exclusive custody, control, and care of the child; and be responsible for his maintenance, protection, support, and education.
- iv) Since the **Adoption Order** has now issued, the adoptive parents of **BABY APRIL** shall be authorized to name the child with the name of their choice.
- v) It is hereby directed that the **Registrar General of Birth** shall make an entry to that effect (with the name provided by the adoptive parents) in the **Register of the Adopted Children** pursuant to section 70 (1) of the Law of the Child Cap 13, Act No 21 of 2009 Cap 13 R.E 2019.
- vi) It is hereby directed that the **Registrar General of Birth** shall make an entry in the **Register** and issue a **Certificate** in favor of the **Adoptive Child** reflecting the names and

parental relationship established by this order.

vii) Costs of this petition shall be borne by the Petitioners.

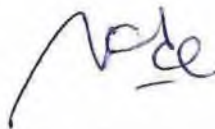
It is hereby so ordered

Dated in **Arusha** this **08th** day of **April 2024**



A. Z. BADE
JUDGE
08/04/2024

RULING delivered in **Arusha** before the parties/parties' representative in Chambers this **08th** day of **April 2024**



A. Z. BADE
JUDGE
08/04/2024

