

**IN THE HIGH COURT OF TANZANIA
AT MWANZA**

MISCELLANEOUS CIVIL CAUSE NO. 2 OF 2021

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

AND

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

FLORA FERDINAND CHACHA PETITIONER

AND IN THE MATTER OF

EDITH BUGANDO INFANT

RULING

Date of last order: 20.05.2021

Date of Ruling: 21.05.2021

A.Z.MGEYEKWA J.

In the current application, Ms. Flora Ferdinand Chacha has petitioned in this court for the adoption of the infant, Edith Bugando. Dr. Flora Ferdinand Chacha, the Petitioner is 42 years old and a resident of Nyakato area within Mwanza Region and is a Tanzanian. The infant child subject of the current

adoption application is Edith Bugando, a Female. According to her birth certificate (Annexure B), she was born on 1st February, 2019, therefore she is 2 years and three months old. On 01st March, 2019, the Municipal Council of Mwanza placed the infant child under the foster care of the Petitioner, Dr. Flora Ferdinand Chacha to be a foster parent of the infant Edith Bugando.

The infant child subject of the current adoption application is Edith Bugando, female, 2 years old. The infant child is an orphan the same is supported by the Social Welfare report that no one went to the Social Welfare Office to declare that she/he is a relative of the infant. The Social Welfare Officer who is the *Guardian Ad Litem* filed a social investigation pursuant to the provision of Rule 11 of the Adoption of a Child Regulations, 2011 which provides:-

"A Social Welfare Officer shall prepare a Social Investigation Report in accordance with Section 75(2) (d) of the Act, to assist the court to determine whether the adoption is in the best interests of the child".

The court had the opportunity to examine the Petitioner, the *Guardian ad litem*, and the infant.

When the matter was called for hearing on 20th May, 2021 Ms. Flora Chacha, the Petitioner was represented by Mr. Bantulaki, learned counsel for the Petitioner accompanied by Ms. Edith Mokiwa, Social Welfare Officer.

Mr. Bantulaki submitted that Dr. Flora Chacha, the Petitioner prays for this court to allow the Petitioner to adopt Edith Bugando, the infant. He stated that the infant's parents are unknown, the child was found in the street then they brought her to the Police station, and later the infant was brought to the orphanage center. Mr. Bantulaki went on to state that Dr. Flora visited the orphanage center and meet Edith Bugando, the infant thus she loved her and decided to adopt her.

It was Mr. Bantulaki's further submission that the Petitioner is a single mother and a medical Doctor working at Bugando Hospital, she is in a position to take care of the child. Insisting, Mr. Bantulaki avers that Dr. Flora Chacha, the Petitioner intends to provide education and other incidental necessities to the child who had been in foster care of the Petitioner since 1st March, 2019 more than two (2) years and four (4) months now.

On the strength of the above submission, Mr. Bantulaki beckoned upon this court to grant the Petitioner's application.

On his part, the *Guardian ad litem*, Ms. Edith Mokiwa, the Social Welfare Officer testified that she prepared the Social Investigation Report and submitted to the court to prove that the infant child is a minor aged 2 years and four months and her parents are unknown. The Social Welfare Officer continued to state that the Petitioner stayed with the infant as a foster parent for one year.

In addition to that, the *Guardian ad litem* stated that she made several visits to Dr. Flora Chacha, the Petitioner's residence to assess the Welfare of the infant Edith Bugando and she has no hesitation in recommending the grant of the adoption for the best interest of the child.

Having carefully considered the submissions made by the counsel for the Petitioner, Mr. Bantulaki, learned Advocate and Ms. Edith Mokiwa, the Social Welfare Officer who is the *Guardian ad litem* for the infant child also having examined the Petitioner and after a cursory perusal of the various annexures which were attached in the petition application along with the Social Investigation Report prepared and filed by the Social Welfare Officer the main issue before me for consideration is *whether the granting of the adoption order sought will be at the best interest of the child.*

In deciding the above issue the court is guided by the Law of the Child Act No. 21 of 2009 as well as the Adoption of a Child Regulations, 2011 GN No. 197 of 2012. It is imperative to stress at the outset that section 4 (2) of the Law of the Child Act No.21 of 2009 is crystal clear that:-

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

The evidence on record shows that the infant child is an orphan whose parents are nowhere to be found, she was placed in foster care of the Petitioner and has been with the Petitioner since 1st March, 2019. The infant child seems well cared for and receives a successful upbringing and that the social investigation report has supported that the Petitioner is suitable to adopt the infant child. For ease of clarity, I will endeavour to point out few provisions which are most pertinent for the determination of the adoption application. Section 56 (1) and, (3) of the Law of the Child Act No. 21 of 2009 provides that:-

" Section 56 (1) an adoption order shall not be made unless the applicant or, in the case of a joint application, one of the applicants:-

- (a) is of or above twenty – five years of age and at least twenty – one years older than the child.*
- (b) Is a relative of the child and is above the age of twenty-five.*
- (c) In case of application by one of the spouses, the other party has consented to the adoption; or*
- (d) a single woman where the applicant is a citizen of Tanzania and with due regard to the best interest of the child.*

(3) An adoption order shall not be made for a child unless:-

- (a) the applicant and the child reside in Tanzania but this shall not apply if the applicant is a citizen of Tanzania resident abroad,*
- (e) child has been continuously in the care of the applicant for at least six consecutive months immediately preceding the date of the submission of the application; and*
- (f) the applicant has notified the Commissioner for Social Welfare of his intention to apply for an adoption order for the child at least three months before the date of the order."*

Nevertheless, section 59 (2) of the Law of the Child Act No. 21 of 2009 provides that:-

"Section 59 (2) Notwithstanding subsection (1), the court shall not make an adoption order unless there is a social investigation report

prepared by the Social Welfare Officer supporting the application for adoption."

From the strength of evidence on record, I have no hesitation to state categorically that the conditions provided for under Section 56 have been fulfilled, the conditions stipulated under Section 59 have been complied with whereby the Social Welfare Officer prepared the Social Investigation Report pursuant to Section 75 (2) (d) of the Law of the Child Act of 2009 and Rule 11 (1) of the Adoption of a Child Regulations, 2011. Therefore, I am satisfied that Edith Bugando, the infants is in good and caring hands. In the case of **RE: M (An infant)** [2004] TLR 247 by Massati, J (as he then was) held that:-

"It is a condition precedent to an adoption order that the making of it will safeguard and promote the welfare of the child throughout his childhood."

Applying the above authority, this court has considered the safeguard and welfare of the child and found that the Petitioner has not only demonstrated but also proved to have offered in the past 2 and four months as a foster parent. Therefore, I am satisfied that it is eminently in the best interest that an adoption order be granted since by so doing the infant's

welfare will be safeguarded because the infant is an orphan and without stable support.

In the upshot, I proceed to grant the Petition, and Dr. Flora Ferdinand, the Petitioner is authorized to adopt the infant child Edith Bugando. The Registrar General of Birth is hereby directed to cause such an entry to be made in the register accordingly. No order as to the costs.

Order accordingly.

DATED at Mwanza this 21st May, 2021.




A.Z.MGEYEKWA

JUDGE

21.05.2021

Ruling delivered on 21st May, 2021 in the presence of Mr. Bantulaki, learned counsel for the petitioner.


A.Z.MGEYEKWA

JUDGE

21.05.2021