Neutral Citation Number: [2020] EWHC 1548 (Fam)

Case No: FD19P00731

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 06/03/2020

Before:

MR JUSTICE HOLMAN

(sitting throughout in public)

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Between:

A M D K	**Applicant**
- and -	
NA	**Respondent**

- -
- -

MS ONYOJA MOMOH (instructed by **OTS solicitors**) for the **applicant**

Hearing date: 6 March 2020

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JUDGMENT
(As approved by the judge)

This judgment was delivered in public. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the child and members of her family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.
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MR JUSTICE HOLMAN:

1. This is an application for the recognition, pursuant to common law, of an adoption order made in Uganda. As I will later describe, the child concerned was found abandoned on the roadside in Uganda in 2014. Despite extensive enquiries and investigation in Uganda at the time, the genetic parents or wider family of that child have never been ascertained. Accordingly, there is no family respondent to the present application.

2. The avowed purpose of making this application is to enable the applicant adoptive mother, who is British, to be able to return to live in the United Kingdom, bringing the child with her.

3. Accordingly, the Secretary of State for the Home Department may have a real and legitimate interest in these proceedings. By an order made at the first directions hearing on 14 January 2020, Mrs Justice Judd ordered that the Secretary of State for the Home Department must be served with notice of these proceedings. Paragraph 2 of the order of Mrs Justice Judd provided that, "The applicant's solicitors shall, by 4 pm on 20 January 2020, serve the application and this order on the Secretary of State for the Home Department". Paragraph 6 of the same order made absolutely clear that this application was listed for a final hearing here, at the Royal Courts of Justice, today, 6 March 2020, at 10.30 am, "at which the court will determine the issue of the recognition of a foreign adoption order (on submissions)". Accordingly, that very order of 14 January 2020 made clear on its face the time and date and place of this final hearing. The order made further provision for the Secretary of State to file and serve a response to the application by 17 February 2020. She has not done so, but whether or not she had done so I would, of course, have heard anything that the Secretary of State may wish to say if she had attended or been represented here today. I have been supplied with three letters, dated 20 January 2020, 10 February 2020, and 17 February 2020, each of which were sent by the solicitors for the applicant to addresses of the Home Office in both Croydon and Sheffield. I have been informed that there was an additional letter sent earlier this week, on 2 March 2020, by recorded delivery, to each of those addresses. In short, no less than eight letters altogether have been sent by recorded delivery to the Secretary of State, giving notice of this application, and stage by stage updating the Secretary of State with further evidence as it was assembled in the form of the witness statement of the applicant and an expert's report as to Ugandan law. I have been informed, and accept, that recorded delivery receipts have been obtained which show that these letters were received and signed for at the respective addresses in Croydon and Sheffield. Further, I have been told today that this very morning there was in fact a telephone call from an official in the Home Office to the applicant's solicitors. The official appears to have made little reference to the hearing today, and his main concern was to enquire whether the child concerned is or is not currently in the United Kingdom. The answer is that she is not, for she remains in Uganda, although her mother, the applicant, is here and present in the court room, having flown over especially for this hearing.

4. In all those circumstances, I am quite satisfied that the Secretary of State has had ample notice of this application and these proceedings, and that the solicitors for the applicant have fully complied with the requirements of the order of Mrs Justice Judd of 14 January 2020. That being so, I propose to proceed with this application,

notwithstanding that the Secretary of State for the Home Department is neither present nor represented. I stress that I do not infer from the non-engagement by the Secretary of State any particular position by her in relation to this application. I merely proceed with it on the basis of the evidence and material that has been supplied to me, and the cogent argument of the applicant's counsel, Ms Onyoja Momoh, in her written skeleton argument dated 5 March 2020.

5. It is very well established that this court has a jurisdiction at common law to recognise foreign adoptions, even though the country concerned does not fall within the international conventions and statutory schemes. Further, the proposition that foreign adoptions can be recognised outside the convention and any statutory schemes is clearly implicit in section 66(1)(e) of the Adoption and Children Act 2002.

6. The approach of this court on an application to recognise a foreign adoption, pursuant to the common law, was clearly established as long ago as 1965 by the Court of Appeal in *Re Valentine's Settlement* [1965] 1 Ch 831, and that authority has since been consistently followed and applied by the courts. For today's purposes it is not necessary to look any further than the most recent such authority, namely that of *W v The Secretary of State for the Home Department* [2017] EWHC 1733 (Fam), a decision of Mrs Justice Pauffley. In her judgment she summarised the legal framework, and at paragraph 14 helpfully set out in summary form the four criteria for recognition. These are, first, that the adoptive parent must have been domiciled in the relevant foreign country at the time of the foreign adoption; second, that the child must have been legally adopted in accordance with the requirements of the law of that state; third, that the foreign adoption must in substance have the same essential characteristics as an English adoption; and fourth and finally, that there must be no reason in public policy for refusing recognition. I intend to apply those criteria to my consideration of this case.

7. The essential factual background is very fully set out in a witness statement by the applicant adoptive mother dated 11 February 2020. For the purposes of this judgment I will summarise it very briefly. She is a British citizen, who was born and brought up here. In about 2004, whilst on holiday in Uganda, she met a Ugandan man, whom she married in May 2006. By early 2007 she had formally relocated to live in Uganda. She had given up her employment here in England. She sold her apartment in London, and moved all her belongings to Uganda; and she says that it was her intention to remain there for the rest of her life. She bought land in Uganda, and built a house there, as a residence for her husband and herself. She established a business there. She became tax resident in Uganda and tax non-resident in the United Kingdom. Later, she became a citizen of Uganda, so she now enjoys dual citizenship. Sadly, her marriage to her husband broke down, and in 2015 there was a divorce, but it is significant that although her marriage to her Ugandan husband had broken down, she made a decision at that time that she would remain living permanently in Uganda, where she had established her home.

8. After her divorce the applicant decided to apply to become a foster parent in Uganda. In early 2016 she was approached by the authorities and asked if she would take in, as a foster child, a two year old girl who had been found abandoned by the roadside in Uganda. That girl is now the subject of this application. She has lived with her now adoptive mother ever since. There was no documentation of any kind left with the abandoned child, and, as I have already said, no one has the slightest idea who the

genetic parents of that child are, nor indeed when actually she was born. When found in mid 2014 she apparently had the appearance of a child aged about eight months, and in due course a notional date of birth was ascribed to her of 4 December 2013. I have seen within the papers the official birth certificate of this child in Uganda. It gives the names of her father and mother as unknown, but gives as her date of birth 4 December 2013, which I shall accordingly take as her date of birth, recognising, as I do, that almost certainly that is not her actual date of birth. On that basis, of course, she is now aged about six and a quarter.

9. In due course the applicant applied to adopt this child, who, she says, bonded with her very rapidly. There was a change in the law of Uganda during 2016, such that a foster parent could apply to adopt a child after the child had lived with him, or her, or them, for one year, and the applicant was accordingly able to commence proceedings to adopt the child early in 2017. It was indeed during the adoption process that the applicant also became a Ugandan citizen, because she says that she still intended at that time to live permanently in Uganda. There was a welfare investigation in Uganda, similar to that which would take place here on an adoption application, and the application was finally heard by The Honourable Lady Justice Katunguka, in the High Court of Uganda, sitting in Entebbe on 2 August 2018. I have read the judgment of Lady Justice Katunguka, and if I may respectfully say so, it is a model of its kind. It sets out with great lucidity, and in appropriate detail, the whole history of this child and her relationship with her adoptive mother. It summarises the evidence that was given to the court. It helpfully reviews all the relevant statutory provisions of Ugandan law, and concludes, after 13 pages, that it is in the best interests of the child to be adopted, and makes an adoption order. If ever it was relevant or necessary to do so (for instance, in relation to immigration into this country), reference can obviously be made to that judgment for its further terms and details.

10. The applicant then describes in her statement how, subsequent to the making of that adoption order, she began to consider returning to live in the United Kingdom. This was first prompted by her father being diagnosed with dementia. The applicant's sister had moved in to help care for their father, but she herself has certain problems to which it is not necessary to make further reference in a public judgment. In order to support her father, and indeed her sister, the applicant made the decision that she would move back to England to do so. Actually, her father then died in April 2019, but the applicant says that at his funeral, in May 2019, her family put pressure on her to continue with a plan to return to the United Kingdom, in particular to help support her sister. So, the applicant has made a settled decision to do so, but she can and will only do so if she is able to bring her adoptive daughter with her.

11. At the moment the Secretary of State has rejected an application for a visa for the child on the ground that there is no automatic recognition here of Ugandan adoptions. So the applicant has made her present application. She says in the last paragraph of her statement, "I am applying for [the child's] adoption to be recognised in the United Kingdom so that as my daughter of four years she can settle with me in the United Kingdom and become a British citizen. I have, in my best endeavours, complied with every procedure and cooperated with every authority in a foreign adoption process. I have been a citizen and resident of Uganda for more than ten years. It was my plan to spend the rest of my life there, but the onset of my father's illness and desire to help both my father and sister compelled me to return to this

country, and I implore the court to allow my daughter to join me so we can be a complete family unit here with our extended family network". Pausing there, I must stress with absolute clarity that there is no question of this court "allowing" the daughter to join her. That is still entirely a matter for the Secretary of State. The task and only proper function of the court on this application is to decide whether or not the Ugandan adoption is recognised here, and, if so, to so declare that fact.

12. Having thus summarised the essential history, I return to the four criteria identified in *Re Valentine's Settlement*, and summarised, as I have mentioned, at paragraph 14 of the judgment of Mrs Justice Pauffley in the case of *W v The Secretary of State for the Home Department*. The first question is whether the adoptive parent, namely the applicant, was domiciled in Uganda at the time of the Ugandan adoption. It is not necessary, in the context of this case, to elaborate this judgment with a detailed exegesis of the law in relation to domicile, nor indeed to cite any authority. I am absolutely satisfied, on the facts that the applicant has described in her witness statements, and as I have summarised them, that in August 2018, at the time when the adoption order was made in Uganda, this applicant was clearly domiciled in Uganda. Her domicile of origin is of course England and Wales, but it is quite clear that long before August 2018 she had abandoned her English domicile of origin and had acquired a domicile of choice in Uganda. She had lived in Uganda since about 2005. She had sold all her possessions here in England, or taken them to Uganda. She had bought land and built a home in Uganda. She had acquired Ugandan citizenship. Significantly, even after the breakdown of her marriage to her Ugandan husband she had continued to live in Uganda. There is not the slightest reason to doubt the truth and sincerity of what the applicant says in the last paragraph of her statement, which I have quoted above, namely that it was her plan at that stage to spend the rest of her life there. So, I am satisfied that at the material time she was domiciled in Uganda. Indeed, she remains domiciled in Uganda as her domicile of choice and will continue to be domiciled there until she finally leaves Uganda with no intention of returning, at which point her English and Welsh domicile of origin will revert.

13. The second question is whether the child was legally adopted in accordance with the requirements of the foreign law. I have no doubt that she was. In the first place, as I have said, there is a judgment of great clarity from a High Court judge in Uganda, who clearly sets out the relevant provisions of Ugandan law, and step by step satisfied herself that they were all satisfied in that case. Further, there is a report from an expert witness, Innocent Ngobi Ndiko, who is a practising lawyer in Uganda, who makes clear also that all the requirements of Ugandan law were satisfied in this case.

14. The third question is whether the foreign adoption has in substance the same essential characteristics as an English adoption. Quite clearly it does. I have read the judgment of Lady Justice Katunguka, and it is quite clear from that that the material statutory provisions are very similar to those of this country, and indeed at one point she actually cites the well-known English text book of Bromley's Family Law. Further, the expert, Innocent Ndiko, says in her witness statement that the adoption laws of Uganda in substance have the same characteristics as an English adoption.

15. The fourth requirement is that there is no reason in public policy for refusing recognition. I, for my part, cannot think of the slightest reason in public policy for refusing recognition.

16. It follows that all the criteria first established by *In Re Valentine's Settlement*, and consistently repeated and applied by this court now for about 55 years, are satisfied in the present case. No doubt I have a residual discretion as to whether or not to grant or refuse recognition, but I cannot see the slightest reason in this case why I should not grant recognition. Accordingly, I will make an order that the adoption of the child, with her full name and date of birth, by the applicant on 2 August 2018, by an order made in the High Court of Uganda, at Kampala, shall be and is recognised in England and Wales at common law with immediate effect.

We hereby certify that the above is an accurate and complete record of the proceedings or part thereof.