

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA**

**FAMILY CAUSE NO. 117 OF 2009**

**IN THE MATTER OF THE CHILDREN ACT, CAP 59  
AND IN THE MATTER OF MONICA (AN INFANT)  
AND IN THE MATTER OF AN APPLICATION FOR LEGAL GUARDIANSHIP BY  
JASON ADAM KING AND JODY LYNN KING.**

**BEFORE: HON. LADY JUSTICE MARGARET C. OGULI OUMO**

**RULING:**

The applicants who are American citizens bring this application under section 33 of the Judicature Act cap 13, section 98 of the Civil Procedure Act Cap 71 and section 3 of the Children Act Cap 59 seeking for the following orders:

1. That they be appointed legal guardians of Monica (an infant)
2. That costs of the application be provided for.

The application is supported by the affidavit of the second applicant dated 1st September, 2009.

The grounds of the application are as follows:-

1. That the child is in need of proper care and protection.
2. That the applicants are responsible and willing to provide the child with a loving home and family.
3. That the applicants are responsible people working for gain and capable of catering for the child's needs.
4. That it is in the best interests of the child that the applicants are granted legal guardianship.
5. That it is fair, just and equitable that the application be allowed.

At the hearing of the application, the applicants were represented by Mr. Nicholas Opiyo.

The High Court has original unlimited jurisdiction in all matters.

**See: Article 139(1) of the Constitution. 1995.**

**See: section 14 of the Judicature Act. Cap 13.**

In the exercise of that jurisdiction, the High court has powers to grant remedies absolutely or on such terms as it thinks fit.

**See: Section 33 of the Judicature Act.**

Similarly, the High Court has inherent powers to make such orders as are necessary in the interests of justice and to prevent the abuse of court process.

**See: Section 98 of the Civil Procedure Act.**

A child has been defined as any person below 18 years of age.

The infant here is 2 years of age as evidenced by Annexure 'B', his Birth Certificate.

**Issue No. 1 — whether the grant will be for the welfare and in the best interest of the child?**

In making any decision concerning a child, the welfare of the child is of paramount importance.

**See: section 3 and paragraph 1(b) of the First Schedule to the Children Act.**

Counsel for the applicant submitted that the mother of the child is dead — see Annexure 'C', her Death Certificate.

That the father has a poor vision and cannot look after the child. The father was in court and court took note of his condition. Annexure "E" is his consent to this application.

Counsel contended that the father was not able to look after the child and the Kamuli Probation and Social Welfare Officer referred the child to Amani babies Home for care and protection — see Annexure D2' on the court file.

In May 2009, the applicant applied to foster the child and foster care order was granted to them. See copy of the foster care order on the file. The father of the infant has consented in writing to this application — see Annexure ‘F’.

In view of the above, court is of the view that the grant if made will be for the welfare of the child and in her best interests as it will enable her access good medical care while being taken care of by the applicants.

**Issue No. 2—whether the applicants are suitable guardians for the child?**

Counsel for the applicants submitted that the applicants are a married couple, since 18-12-04 — copies of the Marriage Certificate and passports are annexed as Annexures ‘A’.

While in Uganda, the applicants have been residing at plot 133, Muyana, Tank Hill, Kampala, Uganda.

That the mother of the infant died at child birth leaving the biological father Mr. Babalanda Grace with 6 children to care.

That the father was unable to care for the child because of his disability — see paragraph 8 of the 2nd applicant’s affidavit.

Mr. Nicholas Opiyo contended that the applicants heard of the child’s plight and felt the need to give her a loving and caring home and after they were given a fostering order, they proceeded to live with the infant at their home in Muyana. In October 2007 when they had to go on leave and the infant was 6 months old, they could not travel with her and placed her under the care of Amani babies Cottage by a Care Order in July, 2008, vide F.C 236 of 2008. See Annexure ‘D1 and ‘D2’.

Mr. Opiyo argued that the biological father of the infant is blind and cannot care for it as a result of which the applicants were granted a Care order on 18-6-09 and since then they have been caring for the child. Annexure “F” is a copy of the order.

Mr. Opiyo submitted that the applicants are responsible people working for gain and capable of catering for the child's needs. See Annexure 'I'

That the applicants have no history of sexual abuse, child abuse, domestic violence nor have they been arrested or convicted of a crime and are responsible and law abiding persons — see Annexure 'H'.

In view of the above, court is of the view that the applicants are suitable guardians. Consequently the application is allowed in the following terms and conditions:

1. The applicants, **Jason Adam King** and **Jody Lynn King** are appointed legal guardians of the child, **Monica**, with full parental rights and responsibilities.
2. The applicants are directed to register the order with the Registrar of Documents, Uganda Registration Services Bureau, Ministry of Justice and Constitutional Affairs, Kampala.
3. The applicants are directed to register the order with the United States Embassy in Kampala and the Ugandan Embassy in Washington D.C.
4. The applicants are directed to obtain a Ugandan passport for the child and renew it from time to time as required by the law.
5. The applicants are permitted to travel out of Uganda with the child.
6. The applicants are directed to register the order with the authority responsible for children and family welfare in Overland Park, Kansas, USA and to file a report once every year regarding the development and state of the welfare of the child with the Registrar, Family Division, High Court of Uganda, Kampala and to continue to do so until the child is 18 years of age or until directed otherwise.
7. The court makes no orders as to costs.

**Margaret C. Oguli Oumo**

**JUDGE**

**4/09/09**

Present:

1. Mr. Opiyo Nicholas for the applicants
2. Elizabeth Nyakwebara