

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

FAMILY CAUSE NO. 104 OF 2009

IN THE MATTER OF THE CHILDREN ACT, CAP 59

AND

IN THE MATTER OF JOSEPHINE (AN INFANT)

AND

**IN THE MATTER OF AN APPLICATION FOR LEGAL GUARDIANSHIP BY
MAYERNICK SUZANNE MILLER AND MAYERNICK II ARTHUR MICHAEL**

BEFORE: HON. LADY JUSTICE MARGARET C. OGULI OUMO

RULING:

The applicants bring this application by Notice of Motion under section 33 of the Judicature Act, Cap 13, Section 98 of the CPA, cap 71 and Section 3 of the Children Act, Cap 59 in which the applicants are seeking to be appointed legal guardians of the infant.

The application is supported by the affidavit of the first applicant dated 3rd August, 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 ready, willing and able to provide the child with a loving home and family.
3. That the applicants are responsible persons working for gain and capable of catering for the child's needs.

4. That it is in the best interest of the child, that the applicant is granted legal guardianship in respect of the child.
5. That is also fair and equitable that this 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: Section 139(1) of the Constitution, 1995.

The Judicature Act on similar terms confers the same jurisdiction on the court.

See: Section 14 of the Judicature Act.

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

See: Section 33 of the Judicature Act

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.

The first issue is whether the application is for the welfare of the child?

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

See: Section 2 of the Children Act.

The child here is 3 years and 8 months old as evidenced by Annexure 'B2', his Birth Certificate.

Mr. Nicholas Opiyo, the learned counsel for the applicants submitted that, the parents of the child are not known as she was abandoned by unknown persons after birth at Masaka Referral Hospital on 24th August 2006. See copy of letter by Senior Probation Officer of Masaka to The Director, Amani Badby Cottage attached as Annexure 'B'.

That the child was placed under the care of Amani Baby Cottage by an order of the Family and Children Court at Jinja vide Care Order issued on 26th March 2008, attached as Annexure 'C'.

Mr. Opiyo contended that the applicants heard about the plight of the child, applied for Care Order in June, 2009 and have been caring for the said child since then. See Annexure 'D'. On 20th July, 2009, the picture of the child was placed in the Daily Monitor news paper calling on the biological parents and relatives to contact the Babies' home but no one has turned up to date. See copy of the news paper attached as Annexure 'E'

In view of the above, court is of the view that granting the guardianship order will be in accordance with section 3 and paragraph 1(b) of the first Schedule to the Children Act.

The second issue is whether the applicants are suitable guardians for the child?

The applicants are American citizens. Copies of their passports are on the court file attached as Annexure 'A'.

The applicants are a married couple. See copy of their Marriage Certificate attached as Annexure 'A2'.

The applicants have 6 biological children and so the child will not have difficulty integrating into their family.

The applicants have undergone a vigorous Home Study in their state to assess their ability to be legal guardians and have been recommended as suitable. A copy of the study is on the court file attached as Annexure 'F'.

Counsel submitted that the applicants have undergone a Criminal background check by the Brentwood Police Department, testifying to their clear criminal record – see Annexure 'G'.

The applicants are gainfully employed and can therefore take care of the child's needs. Their Individual Income Tax Return from the Tennessee Department of Revenue explaining the applicants' financial status is attached.

Mr. Opiyo submitted that, they make this application to enable them travel with the child to seek further medical attention for the child, which court considers to be for the child's welfare.

In view of the above, court is of the opinion that the applicants are suitable guardians for the child.

Consequently, the application is allowed in the following terms and conditions:-

1. The applicants are granted legal guardianship of the infant Josephine with full parental rights and responsibilities.
2. The applicants are directed to register the order with the Uganda Registration Service 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 Ugandan Embassy in Washington DC.
4. The applicants are directed to obtain a Ugandan passport for the child and to 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 in Tennessee, United States of America and to submit a report once every year to the Registrar, Family Division of the High Court of Uganda at Kampala until the child is 18 years of age or until directed otherwise.

7. The cost makes no order as to costs.

Margaret C. Oguli Oumo

Judge

28/09/09

Present:

1. Mr. Opiyo Nicholas for the applicants
2. The applicants
3. Nalongo Nandaula
4. Nyakwebara Elizabeth