

**THE REPUBLIC OF UGANDA**

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

**FAMILY CAUSE NO. 202 OF 2010**

**IN THE MATTER OF MUKISA OWEN (INFANT)**

**AND**

**IN THE MATTER OF AN APPLICATION BY JOSHUA JAMES WILLIS AND  
COURTNEY GIARDINA WILLIS FOR APPOINTMENT AS THE LEGAL GUARDIANS  
OF MUKISA OWEN (AGED 2 YEARS)**

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

**RULING:**

The applicants, American citizens, bring this application under **Article 139 (1) and (2)** of the constitution of Uganda, 1995, **sections 14, 33 and 39** of the Judicature Act, cap 13, **section 98** of the Civil Procedure Act cap 71 **order 52 r 1** of the Civil Procedure Rules; **sections 2, 3, 4, (1) and 5** of the children Act, cap 59 of the Children Act for order:-

1. Joshua James Willis and Courtney Giardina Willis be appointed legal guardians of Mukisa Owen.
2. The infant be allowed to immigrate to the USA to live with the applicants.

The application is supported by the affidavit of Joshua James Willis, dated 14<sup>th</sup> September, 2010.

The grounds of the application are as follows:-

1. The infant was found by Kaggwa Kiwanuka having been abandoned by his mother at Kabalagala.
2. That the mother of the infant, a one Atim Margaret is believed to be a prostitute and her whereabouts are not known.

3. That the father of the infant is not known.
4. That the applicants wish to provide for the infant's emotional and psychological needs and give him parental love and care.
5. That the application is for the welfare and benefit of the infant.

At the hearing, the applicants were represented by Ms. Dora Mirembe.

The High Court has original unlimited jurisdiction over all matters in Uganda.

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

The Judicature Act, **section 14** on similar terms, grants the same jurisdiction to the court.

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, under **section 98** of the Civil Procedure Act, the High Court has powers to grant such remedies as are necessary in the interests of justice and to prevent the abuse of court process.

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

See **section 2** of the Children Act.

The infant here is 2 years old; see Annexure "B" – birth certificate on the court record.

He is therefore a child within the meaning of the Act.

**Issue No. 1- whether the application is for the welfare and in the best interests of the child, Owen Mukisa?**

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

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

Counsel Mirembe submitted that, the child was abandoned by his mother at Kabalagala and was found by a boda boda cyclist– Kiwanuka Kaggwa, who picked him.

Counsel submitted that the father of the infant is unknown.

Counsel for the applicant submitted that, when the child was found on 7/7/2010, Kaggwa reported the matter to Kabalagala Police Station and he was referred to the Probation and Social Welfare Officer – Makindye Division. Further, that because the infant’s parents were not known, the infant was placed temporarily in the custody of Kaggwa. That at the time the infant was in poor health and needed medical attention and was severely malnourished – see Annexure “A”. Counsel submitted that the child was placed in the custody of kaggwa,

Ms. Dora Mirembe contended that, during investigations and on hearing about the plight of the child, the mother of the child– a one Atim Margaret was found, and at the time she was found, she was in poor health and could not take care of the child. Further investigations revealed that the mother of the child was a prostitute in Kabalagala and Kaggwa was authorized to take full custody and protection of the infant.

Kaggwa depones that, at his home where the child was placed, his wife Maria Namaganda opposed the custody of the infant and refused to accept the infant in his home and was mistreating him. Kaggwa deponed that his wife refused to accept the child, thinking that the child was born out of wedlock with another woman.

That on following up the matter and discovering that the child was in a very bad condition, the matter was referred to the health worker, LC2 chairperson Lawrence Mpembe and the Probation and Social Welfare Officer.

Mpembe Lawrence depones that, Kaggwa was on the verge of losing his marriage because of the infant and although the mother of the infant had agreed to visit him regularly, she never came to visit him even once and her whereabouts are not known.

Mistreatment of the child continued and the child was malnourished and in poor medical health.

Counsel submitted further that on visiting the infant, the Probation Officer referred the child to Sanyu Babies Home for his best interest – see care Order on the Court record.

On 30<sup>th</sup> August, 2010, the child was committed to the care of Sanyu babies Home – see Annexure “C” and was received by the management of Sanyu Babies Home on 30/8/2010.

In an attempt to trace the parents of the infant, an advertisement was made in the Bukedde Newspapers see Annexure “E” to the first applicant’s statutory declaration but no one has come to claim the infant.

In view of the above, court is of the view that, the application if granted will be for the welfare and in the best interests of the child.

**Issue No. 2 – whether the applicants are suitable guardians of the child?**

Counsel for the applicants submitted that, the applicants are American citizens of 32 and 29 years of age – see copies of their passports and birth certificates on the court record, Annexures A&B.

That the applicants are married - see Annexure “C” to the 1<sup>st</sup> applicant’s affidavit.

Ms. Dora Mirembe submitted that, the applicants herein have one child, Grace Caroline Willis, 3 years of age.

That the First applicant is employed as a fire fighter and a paramedic at Little Elm Fire Department in Texas, USA – a letter to prove his employment is on court record- Annexure “D” to his affidavit.

That the 2<sup>nd</sup> applicant has a part time employment on the boarder centering, (Dallas) USA, as a senior sales supervisor. A copy of her employment letter is attached to her affidavit in support of the application.

Ms. Mirembe contended that, the applicants have been recommended as being fit for adoption purposes - see copy of the home study on the court record.

That both applicants have no criminal record – see clearance certificates Annexure “C” & “G” to statutory declarations.

Applicants’ counsel submitted that the applicants have never been convicted of any child abuse as per Annexure “H” and “D” to their statutory declarations respectively.

That the applicants heard of the plight of the child through one of their friends who has also adopted a child from Uganda in 2010 and the First applicant has been to Uganda before, and it was through his work with medical Mission Mengo that he came to know of the child.

Further, Ms. Dora Mirembe submitted that, according to **section 3** of the children Act, cap 59, the most important factor in determining issues of children is the welfare of the child and this application is for the welfare of the child Mukisa Owen for the following reasons

- a) The child was abandoned
- b) The whereabouts of the infant's mother are not known.
- c) The applicants wish to provide for the child's emotional and psychological need and to give him a home, parental love and care.
- d) That the application is for the welfare and benefit of the child.

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

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

1. The applicants, **Joshua James Willis and Courtney Giardina Willis** are appointed legal guardians of the child– Mukisa Owen.
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.
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 in order to be able to discharge their parental rights and obligations fully.
6. The applicants are permitted to Adopt the child in the USA.

7. The applicants are directed to file a report once every year, regarding the state of the welfare and development of the child, to the Registrar Family Division, High Court, Kampala, until the child is 18 years of age or until directed otherwise.
8. The court makes no orders as to costs.

**Margaret C. Oguli Oumo**

**JUDGE**

**25/10/2010**

**Present:**

1. Counsel for the applicant
2. Betty Lunkuse, court clerk
3. Oliver Nantamu, Research Assistant