

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
FAMILY CAUSE NO. 158 OF 2009
IN THE MATTER OF ODOKE EMMANUEL (INFANT)

AND

**IN THE MATTER OF AN APPLICATION FOR LEGAL GUARDIANSHIP OF ODOKE
EMMANUEL (AGED 6 YEARS) BY DANIEL K. LUDLAM AND KATHRYN LUDLAM**

BEFORE: HON LADY JUSTICE MARGARET C. OGULI OUMO

RULING:

The applicants, citizens of the United States of America, bring this application under Article 139(1) of the Constitution of the Republic of Uganda, 1995, Sections 14, 33 and 39 of the Judicature Act, Cap 13 and Section 3 of the Children Act Cap 59 for orders that:-

1. Daniel K. Ludlam and Kathryn Ludlam be appointed legal guardians of the child Odoke Emmanuel.
2. The infant be allowed to migrate to USA to live with James Daniel K. Ludlam and Kathryn Ludlam in accordance with the American law.
3. The infant is under the care and custody of Sanyu Babies Home.
4. The applicants wish to provide the infant with a home, parental love and care.
5. The application is for the welfare and benefit of the infant.

The application is supported by the Statutory Declarations of the applicants dated 8/07/09, the affidavits of Sarah Buzabalyawo the Ag. Probation and Social Welfare Officer, Lubaga Division dated 4/09/09, Barbra Nankya the Administrator of M/S Sanyu Babies' Home dated 6/11/2009 and that of Bagamba Irene, the a Police Officer at the Central Police Station, Kampala dated 6/07/09.

The grounds of the application are briefly as follows;

1. The infant was found abandoned within the city centre by an unknown person.
2. That the parents of the infant are unknown.
3. That the infant is under the care and custody of Sanyu Babies Home.
4. That the applicants wish to provide the infant with a home, parental love and care.
5. That this application is for the welfare and benefit of the infant.

At the hearing of the application, Mr. Peter Nyombi, assisted by Ms. Rebecca Mugabi represented the applicant.

The Constitution of Uganda, in Article 139(1) and Section 14 of the Judicature Act, give unlimited original jurisdiction to this court to hear all matters, including guardianship matters.

In the exercise of that jurisdiction, the High court has powers to make orders absolutely or on such terms as it considers necessary.

See: Section 33 of the Judicature Act.

The High court has inherent powers to grant such remedies 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 old under Section 2 of the Children Act.

The infant here is about one year and two months old according to his Care Order on the court file. He is therefore a child within the meaning the Children Act.

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

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

Mr. Nyombi, counsel for the applicant submitted that the child was abandoned in the city center by an unknown person on 16th September, 2008– see affidavit of Barbara Nankya and Sarah Buzabalyawo, the Probation and Social Welfare Officer, Lubaga Division, Kampala. That the infant was found by Sgt. Irene Bagamba, a Police Officer. That Irene Bagamba handed over the infant to Casualty Police Post, at New Mulago Hospital Kampala for medical examination.

Mr. Nyombi submitted that, according to the affidavit of Barbara Nankya, in paragraph 7 thereof, she deponed that the Officer in Charge Casualty Police Post referred the child to Acute Care Unit Mulago Hospital – see copy of the referral letter attached as Annexure “A” to Ms. Buzabalyawo’s affidavit on the court file. That the infant was subsequently referred to Sanyu Babies Home by one Magezi Richard, Probation and Social Welfare Officer of Lubaga Division – see Annexure “B” – the referral letter.

That the management of Sanyu Babies Home received the child on 24/10/08. See copy of the recipient form attached as Annexure “D” on the court file. That on the 21/4/09, the child was committed to Sanyu Babies Home. See Annexure “E”, the Care Order granted by the Family and Children Court of Mengo at Mwanga II Road, Kampala on the court file.

Mr. Nyombi contended that in a bid to trace the relatives of the child, his photograph was advertised in the New vision newspaper of 5/11/09, but nobody has claimed the infant. See Annexure “F” on the court file.

In view of the above, court is of the opinion that the application if granted will be for the welfare of the child as it is desirable for the child to grow up in a home with loving parents rather than an institution.

Now we shall turn to whether the applicants are suitable guardians for the child?

Mr. Nyombi submitted that, the applicants are American citizens and a copies of their passports are attached to their Statutory Declarations as Annexures “A” respectively.

That the applicants are married and a copy of their Marriage Certificate is attached as Annexure “B” to the first applicant’s Statutory Declaration.

That the applicants have three children of their marriage; Kade aged 6 years, Elyse aged 2 years and Haniah aged 4 years which will make it easier for the child to integrate into their family.

Mr. Nyombi argued that Mr. Ludlam is a business man trading under the name and style of D.M.B Construction and is the owner of the business.

The second applicant is a full time stay home mother.

Court is of the opinion that the applicants are in a financial position to support the child.

Counsel contended that the applicants have been recommended as being fit for the purposes of looking after the child after they had undergone an International Home Study – see the copy attached on the court file as Annexure “D”.

That the Probation and Social Welfare Officer Lubaga Division, Ms. Buzabalyawo has recommended the applicants as suitable guardians.

That the applicants have no criminal record and certificates of their good conduct are attached as Annexures “E” and “B”.

Mr. Nyombi submitted that the application will be for the welfare and in the best interests of the child.

In view of the fact that the applicants can provide the child with a home, cater for his welfare needs and have the means to do it and there is no one else willing and able to look after the child, court is of the view that the grant to the applicants will be for the welfare and in the best interests of the child, Odoke Emmanuel. Consequently, the application is allowed in the following terms and conditions:-

1. The applicants **Daniel K. Ludlam and Kathryn Ludlam** are appointed legal guardians of the child **Odoke Emmanuel** 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 to renew it from time to time as required by the law.
5. The applicants are permitted to travel with the child to the United States of America, so as to comply with their parental responsibility under Article 34(1) and (2) of the constitution.
6. The applicants are directed to register the order with the authority, responsibility for children in Estes Park, Colorado, USA and to file a report, to the Registrar, Family

Division, High Court of Uganda, once every year, regarding the state of the welfare and development of the child until he is 18 years of age or until directed otherwise.

7. The court makes no orders as to costs.

Margaret C. Oguli Oumo

JUDGE

15/12/2009

Present:

1. Ms. Rebecca Mugabi, counsel for the applicants
2. The First applicant
3. Nalongo Nandaula, court clerk
4. Nyakwebara Elizabeth, Research Assistant