

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

FAMILY CAUSE NO. 122 OF 2009

IN THE MATTER OF RESTY NANYANZI AND JOYCE KISAKYE (INFANTS)
AND
IN THE MATTER OF AN APPLICATION FOR GUARDIANSHIP BY ADLAI CHESTER
AND AMANDA
CHESTER OF THE SAID (INFANTS)

BEFORE: HON. LADY JUSTICE MARGARET C. OGULI OUMO

RULING:

The applicants bring this application by Notice of Motion under Article 139 of the Constitution of the Republic of Uganda, 1995, SS 2, 3,4,5,6 and the First Schedule to the Children Act, Cap 59, Section 14, 33 and 39 of the Judicature Act, Cap 13, section 98 of the Civil Procedure Act, Cap 71 and Order 52 r land 3 of the Civil Procedure Rule 51.71-1, in which the applicants are seeking for the following orders:-

a) That the Honorable Court be pleased to appoint a guardian in respect of Resty Nyanzi and Joyce Kisakye (children) who are Adlai Chester and Amanda Chester to be guardians of the said infant children.

b) That costs of the application be borne by the applicants.

The application is supported by the affidavits of Amanda Chester and Joseph Kagimu dated the 7th, July, 2009 and 28th September, 2009 respectively.

The grounds of the application are;

a) That the applicants have been nurturing and caring for the infant children under the supervision of a social worker.

- b) That the infants' parents are dead and there is no relative to take care of the infant children.
- c) That the applicants are possessed with willingness and capacity to look after the infant children.
- d) That it is in the best interest of the children and their welfare that the order made.

At the hearing of the application, the applicants were represented by one Mr. Sebuta Hamza. The High Court has unlimited original jurisdiction in all matters in Uganda.

See: Article 139 of the Constitution. 1995.

Section 14 of the Judicature Act, confers similar jurisdiction on the court.

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

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.

See: Section 33 of the Judicature Act.

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

See: Section 2 of the Children Act.

The children are:

1. Joyce Kisakye - 2 years and 7 months old.
2. Resty Nanyanzi —4 years and 6 months old

See: Annextures "F2" and 'E2'-their Birth Certificates respectively, on the court and the report by the Ag. Probation officer, Lubaga Division.

The first issue is whether the grant will be for the welfare and in the best interests of the Children?

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.

Both the parents of the children, Fred Dumba and Samalie Nantume are dead. —See Annextures ‘F1’ and ‘F2’, their death certificates on the court file. The children were initially catered for by their grandmother until they were taken up by A.F.A.A Orphanage in Kabowa. The applicants have been providing for their needs through that Organization.

The grandmother, Joyce Damulira, who has no way of supporting the children, has consented to applications. See Annexure ‘K’.

In view of the above, court is of the view that the children are total orphans having lost both their parents and the only surviving relative, their grandmother being unable to look after them, handed them over to an orphanage and consented to this application.

Consequently, the grant, if made will be for the welfare and in the best interests of the children.

The second issue is whether the applicants are suitable guardianship, for the children?

The applicants are American citizens and copies of their passports are on the court record attached as Annextures ‘A1 and ‘A2’ respectively.

The applicants are 30 years and 29 years respectively, see their Birth Certificates on the court record attached as Annextures ‘B1’ and ‘B2’ respectively.

The applicants are a married couple; see a copy of their Marriage Certificate on the court file attached as Annexure ‘C’ to the second applicant’s affidavit. They have two biological children, aged 2 and 4 years.

So the children will not have difficulty integrating into the applicant’s family.

The applicants are gainfully employed and can take care of the needs of the children.

The first applicant is employed as the Chief Financial Officer of Rutter Communications Network, LLC.

See his reference letter from his employer on the court record. The second applicant is a graduate Kindergarten Teacher with Cowan Community School Corporation in Muncie, Indiana.

Counsel for the applicants, Mr. Sebuta submitted that the applicants have a home in Muncie, Indiana, USA and that they have no history of substance abuse, alcoholism or drug abuse or any conduct that would render them to be unfit guardians of the infants. See their medical reports on the file.

The applicants have no criminal record. See report from the Delaware County, Muncie, Indiana State Police attached as Annextures 'G1' and "G2" respectively on the court record.

Mr. Sebuta contended that the applicants are in good mental and physical health and a copy of the medical report is on the court record attached as Annextures 'H1' and "H2" respectively.

Mr. Sebuta argued that the applicants previously spent time in Uganda with the children - copies of the photos of these events are on the court record attached as Annexature 'L'.

The applicants have undergone a home study in their country and been recommended as suitable guardians. See their Home Study Report on the court file attached as "I".

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

1. The applicants are appointed legal guardians of the children, Resty Nanyanzi and Joyce Kisakye, with full parental rights and responsibilities.
2. The applicants are directed to register the order with the Registrar of Documents, 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 the Ugandan Embassy in Washington.
4. The applicants are directed to obtain Ugandan passports for the children and to renew them from time to time as required by the law.
5. The applicants are permitted to travel out of Uganda with the children.
6. The applicants are directed to register the children with the authority responsible for children in the county of Muncie, Indiana, and to file a report every one year, with the Registrar, Family Division, High Court of Uganda, Kampala, regarding the state of the welfare of the children and to do so until the children are 18 years of age or until directed otherwise.
7. The court makes no order as to costs.

Margaret C. Oguli Oumo

JUDGE

29/09/09

Present:

1. Mr. Sebuta Hamza, counsel for the applicants
2. The applicants
3. Nalongo Nandaula — Court Clerk
4. Nyakwebara Elizabeth — Research Assistant