

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

FAMILY CAUSE NO. 128 OF 2009

IN THE MATTER OF BANJA STEPHEN (MINOR)

AND

**IN THE MATTER OF AN APPLICATION FOR APPOINTMENT AS LEGAL
GUARDIANS OF BANJA STEPHEN (13 YEARS) BY RONALD BRIAN
ECKLEBARGER AND MELANIE RAE ECKLEBARGER**

BEFORE: HON. LADY JUSTICE MARGARET C. OGULI OUMO

RULING:

The applicants bring this application by Notice of Motion under Article 139(1) of the Constitution of Uganda, 1995, Sections 14, 33 and 39 of the Judicature Act, Cap 13 and section 3 of the Children Act, Cap 59, in which the applicants are seeking for the following orders:

1. That the applicants be appointed legal guardians of Banja Steven.
2. That costs of the application be provided for.

The application is supported by the statutory declarations of the applicants dated 25/08/2009, the affidavits Peter Kabandize, the LC1 Chairman Lwambogo where the child and his mother lived dated 18/09/2009, William Edema, the Administrator of M/S Welcome Home Ministries, the home that has been providing for the child dated 16/09/2009 and that of Opio Ouma, the Senior Probation Officer, Jinja District dated 16/09/2009.

The grounds of the application are briefly as follows:

1. That the child's mother is a peasant who cannot provide for him.
2. That the whereabouts of the father are unknown.
3. That the applicants wish to provide the child with a home, parental love and care.
4. That the application is for the welfare and benefit of the child.

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

Issue No. 1- Whether the grant will be for the welfare of the child and for his benefit?

The High Court has unlimited original jurisdiction in all matters.

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

See: Section 14 of the Judicature Act.

In the exercise of that jurisdiction, the High Court has powers to grant remedies absolutely 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 14 years of age.

Counsel for the applicants submitted that the father of the child abandoned the family and yet the mother has no reliable source of income — see paragraph four of the affidavit of Opio Ouma. That the mother handed the child to Welcome Home Ministries who have been providing medical treatment for the child — see paragraph six of the affidavit of Opio Ouma, on the court file.

Mr. Nyombi submitted that the applicants wish to provide the child with a home, parental love and care. That the application is for the welfare and benefit of the child.

The mother of the infant herself was in court and confirmed that she has no means of looking after the child and she seconds the application.

In view of the above, court is satisfied that the father of the child abandoned the family and the mother has no income to provide for the child who needs special medical treatment and that the grant, if made will be for the welfare and benefit of the child.

Issue No. 2. Whether the applicants are suitable guardians for the child?

The applicants are American citizens — copies of their passports are attached to their statutory declarations as Annextures ‘A’ respectively.

The applicants are married — see a copy of their Marriage Certificate attached as Annexure ‘B’ to the first applicant’s statutory declaration.

The first applicant is a Pastor at Heart land Church and a copy of his reference letter is attached as Annexure “C” to his statutory declaration and his wife, the second applicant is a housewife but runs a clearing business called Angels for Everything.

The applicants have undergone a Home Study in their home state, have been recommended as suitable guardians and that their home is suitable for adoptive purposes — see their Home Study report on the court file.

The applicants have no criminal record. Copies of their criminal clearance Certificates are attached to their respective statutory declarations as Annextures ‘F’ and ‘B’.

Mr. Nyombi submitted that according to section 3 of the Children Act, in determining affairs concerning children, the paramount consideration is the welfare of the child.

In this case, the mother of the infant is a peasant with no source of income, the father’s whereabouts are unknown and the applicants are willing and able to provide the child with a home, love and parental care.

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

1. The applicants are appointed legal guardians of the child, Banja Stephen, 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 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.
6. The applicants are directed to register the order with the authority responsible for children and family welfare in Columbus, Ohio, USA and to file a report, once every year regarding the state of the welfare of the child to 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 order as to costs.

Margaret C. Oguli Oumo

JUDGE

30/10/09

Present:

1. Counsel for the applicants
2. The applicants
3. Nalongo Nandaula — Court Clerk
4. Nyakwebara Elizabeth — Research Assistant