

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
FAMILY CAUSE NO. 131. OF 2009**

**IN THE MATTER OF ALEX MALIK HODGKINS (INFANT)
AND
IN THE MATTER OF AN APPLICATION FOR APPOINTMENT OF FRANKLIN
GUILLAUME AND
DENISE JO-ANNE AS LEGAL GUARDIANS OF ALEX MALIK HODGKINS (AGED 8
MONTHS)**

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 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, in which the applicants are seeking for the following orders:

- 1 That the applicants be appointed the legal guardians of Alex Malik Hodgkins.
2. That the infant be allowed to migrate to Canada to live with the applicants in accordance with Canadian law.
3. That costs of the application be provided for.

The application is supported by the statutory declarations of the applicants dated 20/06/2009, the affidavits of; William Edema, the Administrator of the Welcome Home Ministries where the infant has been staying dated 26/09/2009 and that of Opio Ouma, the Senior Probation Officer, Jinja dated 20/09/2009.

The grounds of the application are:

1. That the infant was abandoned at Bugembe village, Bundumbuli East, Jinja District.
2. That the parents of the infant are unknown.
3. That the applicants wish to provide the infant with a home, parental love and care.
4. That the application is for the welfare and benefit of the infant.

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

The law with regard to guardianship is that the High Court has original unlimited jurisdiction over all matters in the country.

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

See : Section 14 of the Judicature Act. ca 13 laws of Uganda.

In the exercise of that jurisdiction, the High Court has powers to grant orders 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, under section 2 of the Children Act.

The infant here is 8 months old as evidenced by his Birth Certificate on the court file attached as Annexure 'E' to William Edema's affidavit.

Issue no 1—Whether the application is for the welfare and best interests of the child?

Counsel for the applicants, Mr. Peter Nyombi submitted that, according Mr. Edema's affidavit, the child was abandoned at Bugembe, Budumbuli East, near Mr. Magoma's home, who found

him. The matter was reported to Mr. Opio Ouma, the Probation and Social Welfare Officer, Jinja who requested the Administrator of M/S Welcome Home Ministries to look after and take up custody of the child — see copy of letter to the Administrator attached as Annexure ‘F’ to his affidavit and paragraph 3 of Mr. Ouma’s affidavit. Welcome Home Ministries has since then had custody of the child. On 18th June, 2009 the Home was granted a care order in respect of the child. See Annexure “G” to William Edema’s affidavit which is a copy of the care order on the court file.

Mr. Nyombi, learned counsel for the applicant submitted that in an attempt to locate the parents or relatives of the child, his photograph was advertised in the New vision of 14-9-09, but nobody has turned up to claim the infant — see Annexure ‘I’ attached to William Edema’s affidavit.

In view of the fact that the child was abandoned, the parents are unknown and no one has come up to claim him after the newspaper advertisement and an institution is not the best place for the child to grow up in. Court is of the view that the application if granted will be for the welfare and benefit of the child as it will give him the opportunity to grow up in a home, with loving parents.

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

Counsel for the applicants submitted that the applicants are Canadian citizens — see copies of their passports on the court file attached as Annexures ‘A’ to their respective statutory declarations.

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

The applicants have 2 biological children. Alba 5 years old and Rose 3 years old. So, the child will not have difficulty integrating into the applicants’ family.

The first applicant is gainfully employed on a full-time basis in the capacity of Manager in Tax with Deloitte & Touche LIP. A copy of his reference letter from his employer is attached as Annexure “C” to his statutory declaration.

The second applicant is a home maker, but also teaches at Edmonton Bible School, part time. A copy of her reference letter is attached to her statutory declaration as Annexure “B”. Therefore, they will be able to provide for the child’s financial and emotional needs.

Mr. Nyombi contended that the home of the applicants has been recommended as being suitable for adoptive purposes — see copy of the recommendation and Home Study report attached as Annexure ‘D’ to the first applicant’s statutory declaration.

According to Mr. Nyombi’s arguments, the applicants are in good mental and physical health. This is evidenced by copies of their medical certificates attached as Annexures ‘F’ and ‘D’ respectively to the second applicant’s statutory declaration.

The applicants have no Criminal record and their criminal clearance Certificates by the Interpol, National Central Bureau, Ottawa, Canada are attached as Annexures “E” and “C” respectively, to their statutory declarations.

Counsel submitted that in accordance with section 3 of the Children Act, it is for the welfare of the infant that the applicants be appointed legal guardians for the following reasons;

1. The infant was abandoned at Bugembe village, Budumbuli East, Jinja district.
2. That the infant’s parents are unknown.
3. That the applicants are willing to provide a home, parental love and care for the infant.

In view of the above, court is of the view that the applicants are suitable guardians as they have a home and children. The infant will thus not have difficulty integrating into their family and the applicants have the means to provide for the welfare and emotional needs of the infant.

Consequently, court is of the view that the application if granted will be for the welfare and in the best interests of the child and the applicants are granted legal guardianship of the child in the following terms and conditions:

1. The applicants are appointed legal guardians of the child, Alex Malik Hodgkins, 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 Canadian Embassy in Nairobi, Kenya and the Uganda Embassy in Canada.
4. The applicants are permitted 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 and live with the child in Canada in accordance with Canadian law.
6. The applicants are directed to register the orders with the authority responsible for children and Family Welfare in Alberta, Canada and to file a report once every year, with the Registrar, Family Division, High Court, Kampala, regarding the development and welfare of the child 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

29/10/09

Present:

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