

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

FAMILY DIVISION

HCT-00-FD-FC-0196-2008

IN THE MATTER OF ALAN HODGKINS AN INFANT

AND

**IN THE MATTER OF AN APPLICATION FOR LEGAL GUARDIANSHIP BY
JAMES FRANKLIN HAMMOND AND HEATHER LEE HAMMOND**

BEFORE: THE HONOURABLE MR. JUSTICE FMS EGONDA-NTENDE

RULING

1. James Franklin Hammond and Heather Lee Hammond, the applicants in this matter, are United States citizens living at 8401 Tio Diego Place, La Mesa CA 91941 in the United States. In this application they seek to be appointed guardians of Alan Hodgkins an infant born in Uganda, and now living with Welcome Home Ministries, Jinja.
2. The application discloses that the infant was born on the 15th July 2004 at Naguru Health Centre, Nakawa Division in Kampala. The mother was called Nalugo Deborah aged about 23 years. The mother and baby were admitted to Mulago Hospital at the special care unit. The mother disappeared living the infant in the hospital.
3. The medical social worker of Mulago Hospital on 30th September 2004 wrote to the Probation and Social Welfare officer, Jinja requesting that he finds a home for the baby. This is the first troubling aspect of this application. The Probation and Social Welfare Office of Jinja ordinarily deals with situations arising within its geographical reach. The baby was in Mulago Hospital. The baby was born in Kampala. Ordinarily I would have expected that this case would have been referred to the Probation and Social Welfare Office in Kampala. This appears to be a pattern with a number of previous applications that have come before this court. Anyhow this is not the decisive point for this application.

4. The application reveals that the Probation and Social Welfare Officer of Jinja asked the Welcome Home Ministries Africa based in Jinja to take custody of the child by a letter written on the 2nd October 2004. Mr. William Edema, the Manager of Welcome Home Ministries Africa applied to the Family and Children's Court at Jinja for a care order on 30th September 2004 well before it was requested to take on this baby by the Jinja Probation and Social Welfare Officer! This application was received about 2 years later on 26th July 2006, at least according to the receiving stamp of the Chief Magistrates Court of Jinja. It was granted on the 28th July 2006. Did Welcome Home Ministries Africa Ltd having filled in the application on 30th September 2004 keep the application for about 2 years without filing it in court?
5. It is worth noting that the letter from Mulago Hospital to the Probation and Social Welfare Officer, Jinja is dated, 30th September 2004, the same date the application was made to the Family and Children Court in Jinja. Did all these transactions take place on the same date of 30th September 2004? Did Welcome Home Ministries Africa Ltd apply to Jinja Family and Children's Court for a care order before the request from the Probation and Social Welfare Officer was written or made to it? Those questions point to other troubling aspects of the facts surrounding this application.
6. Under the Children Act, Section 27 Care Orders may be granted by a Family and Children's Court to a foster parent or an approved home in respect of an infant who may be in need of care. Approved homes under the Children Act must be approved by Minister as fit for the purpose. See Section 56 of the Children Act.
7. Welcome Home Ministries is not an approved home within the Section 56 of the Children Act. Attached to this application was a letter addressed to no one and signed for the Permanent Secretary of Ministry of Gender, Labour and Social Development. It is dated 15th October 2008. It basically says that the Ministry is processing a certificate of operation. In a nutshell Welcome Home Ministries Africa Ltd is not an approved home at the time this application was made. Neither was it an approved home when it sought for a care order from the Family and Children Act. It is not qualified to receive a care order and keep infants under the Children Act.
8. In my view an individual or an institution not in lawful custody of an infant cannot pass on custody of such an infant to non resident aliens/applicants however well intentioned the applicants are to the infant in question. The various legal and factual anomalies that I have pointed out herein above have to be completely explained and

or rectified before an application of this nature can be entertained. This court cannot ignore these flagrant violations of the law at it was urged by learned Counsel for the Applicants, Mr. Peter Nyombi to do for the sake of the infant. The legal infractions noted above and the unexplained factual inconsistencies which form the base of this application raise a red flag to this court which I cannot ignore.

9. For the those reasons I reject this application and direct the Registrar of this Court that a copy of this ruling be forwarded to the Attorney General and the Permanent Secretary, Ministry of Gender, Labour and Social Development for their attention.

Signed, dated and delivered at Kampala this 28nd day of January 2009

FMS Egonda-Ntende

Judge