

**THE REPUBLIC OF UGANDA**

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

**FAMILY DIVISION**

**HCT-00-FD-FC-0193-2008**

**IN THE MATTER OF NYANGOMA VENERANDA AND KATO JOHN MARY  
VENNY INFANTS**

**AND**

**IN THE MATTER OF AN APPLICATION FOR LEGAL GUARDIANSHIP BY  
DANIEL TARRANT AND ELIZABETH JOANNE TARRANT**

**BEFORE: THE HONOURABLE MR. JUSTICE FMS EGONDA-NTENDE**

**RULING**

1. The applicants, Daniel Tarrant and Elizabeth Joanne Tarrant, are a married couple living at 1411 Society Place, Newton 18940, Pennsylvania, USA. The applicants are United States citizens. In this application they are seeking an order of legal guardianship in respect of a pair of twins born in this country, Nyangoma Veneranda and Kato John Mary Venny.
2. According to the Probation Report filed in this matter the infant twins are now 1 year and 5 months old. On the dates not disclosed the twins were abandoned with an old and sick woman at Bushenyi. The twins were eventually admitted into Ibanda Babies Home, an approved home under the Children Act. Efforts to establish the whereabouts of the parents and or relatives of the twins through advertisement in the newspapers were undertaken but no response was forthcoming.
3. The applicants married on 9<sup>th</sup> July 2005 in the city of Phila, Pennsylvania, US. Daniel is a teacher of Theology at Archbishop Wood High School and a part time youth minister at St. Vincent de Paul Church. He has loved Uganda and has always wanted to add a Ugandan to his family by way of guardianship and adoption. Joanne is a teacher of Spanish in the South Hunterdon Regional Hill School District. The school district is in New Jersey, US. Like Daniel she has always wished for a Ugandan to join their family. The applicants have no biological or other children at home.

4. Pearl S Buck International carried out a comprehensive adoptive home study on the applicants a copy of which was attached to this report. The report concludes that the applicants are financially, physically, emotionally, and mentally well prepared to carry out parenting duties to young children in their family. The applicants have no known criminal record in the US.
5. The application for legal guardianship stated that this application is made under Article 139(1) of the Constitution, Section 14 of the Judicature Act, Sections 2, 3, 4 and 5 of the Children Act, Section 98 of the Civil Procedure Act and Order 51, Rules 1 and 3 of the Civil Procedure Rules. From the applicants' affidavits and supporting documents it is clear that their intention is to adopt the twins. The law applicable therefore would be Section 46 of the Children Act which deals with inter country adoption.
6. Clearly the applicants under Section 46 of the Children Act would not qualify on at least 2 out of the 6 conditions that have to be fulfilled. The applicants have not been residents in this country for 3 years and have not fostered the infant in question at all let alone the required period of 36 months. The applicants would fulfil the rest of the conditions. I shall set out Section 46 of the Children Act below.

**'46 Intercountry Adoption**

- (1) A person who is not a citizen of Uganda may in exceptional circumstances adopt a Ugandan child, if he or she--
  - (a) has stayed in Uganda for at least three years;
  - (b) has fostered the child for at least thirty six months under the supervision of a probation and social welfare officer;
  - (c) does not have a criminal record;
  - (d) has a recommendation concerning his or her suitability to adopt a child from his or her country's probation and welfare office or other competent authority; and
  - (e) has satisfied the court that his or her country of origin will respect and recognise the adoption order.'

7. As the clear route of adoption is closed the applicants have resorted to another route. They have applied for legal guardianship under the provisions of the law noted above. I am sceptical whether those provisions would grant this court the authority to grant an order of legal guardianship in the circumstances of this case. Firstly, because clearly the law that would govern the circumstances of this case is the law related to inter country adoption, which is evaded by the present application. Secondly the provisions cited as the basis for this application do not provide expressly that this

court is seized with the jurisdiction to grant orders of the kind now sought. However, the Court of Appeal has in the case of *In the Matter of Francis Palmer an Infant, Civil Appeal No. 32 of 2006*, and in the case of *In the matter of Howard Amani Little, an infant, Civil Appeal No.33 of 2006* held that this court has jurisdiction and authority to grant orders of legal guardianship. In that regard I am bound to follow that decision. What that decision does not make clear are the circumstances in which a court may issue that kind of order, especially in cases that are akin to inter country adoptions.

8. In that decision the Court of Appeal was divided as to when and how the High Court may grant orders of legal guardianship in the circumstances where the applicants were foreign applicants resident outside this country and whose intention of applying for legal guardianship was to take the children outside this jurisdiction, with the eventual aim of adopting such children.
9. One of the judges was of the view that legal guardianship was to be resorted to where the applicants could not fulfil the conditions under Section 46 of the Children's Act. Another judge disagreed. Though in agreement that this court had jurisdiction to grant orders of legal guardianship, the judge stated that it should not be applicable where the applicants were foreign applicants who did not qualify under Section 46 of the Children Act. To allow such applicants to obtain orders of legal guardianship, while they did not qualify to adopt the children under the Act, would be an infringement of the Act. The third judge did not agree that the High Court had the power to grant orders of legal guardianship, such power being only available to Family and Children Court, by the issue of care orders and appointment of Foster Parents. Nevertheless the judge concurred in the orders proposed for legal guardianship by the first judge.
10. The Court of Appeal decision, given the conflicting legal positions taken by each judge, provides no authoritative guidance as to how this court should exercise its power in granting orders of legal guardianship. In the result, perhaps, I must turn to simply one question. Is the grant of such an order in the best interest of the infant?
11. The circumstances of this case are rather unusual. The parents of the twins have not been identified. Neither is the woman to whom the child were abandoned. Ibanda Babies Home did not file an affidavit in support of this application though it is the institution now with the legal custody of the children. Sister Christine Laboyi attended these proceedings representing Ibanda Babies Home.

12. The children are now in an institution at a very tender stage. Institutions are not the best places to raise young children. Children need to grow up in the loving and caring environment of a home, be it of parents or guardians. Institutional care is intended under our statutory scheme to be temporary. Care Orders cannot be given for more than 3 years under Section 29 of the Children Act. The care order in respect of these infants did not specify its duration but the law limits such orders to no more than 3 years.
13. The infants, on the evidence before me have not received a local offer of a home. The applicants have offered a loving and caring home for these twins in which they can be raised. This saves them from an inadequate institutional environment and provides them with an opportunity for a normal child upbringing. I am satisfied in the circumstances of this case that it is in the best interests of the twins to grant this application rather than to decline.
14. The applicants are appointed guardians of the Nyangoma Veneranda and Kato John Mary Venny.

Signed, dated and delivered at Kampala this 28<sup>th</sup> day of January 2009

FMS Egonda-Ntende

Judge