

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

FAMILY CAUSE NO. 098 OF 2009

IN THE MATTER OF KIRABO JOSEPH (INFANT)

AND

**IN THE MATTER OF AN APPLICATION BY HON. JAMES ALEXANDER RAMSAY
AND BRENDA JANE RAMSAY TO BE APPOINTED LEGAL GUARDIANS OF
KIRABO JOSEPH AGED 1 YEAR AND 2 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 Uganda, 1995, sections 14, 33 and 39 of the Judicature Act, Cap 13 and section 3 of the Children Act, cap 59, seeking for orders that:-

1. They be appointed legal guardians of Kirabo Joseph (infant).
2. Costs of this application be provided for.

The application is supported by the affidavits of the applicants dated 5th October, 2009.

The grounds of the application are that:

1. Both parents of the infant are unknown.
2. There is no known surviving relative of the infant.
3. The applicants are able and willing to provide the infant with a home and parental love.
4. The application is for the welfare and benefit of the infant.

At the hearing of the application, the applicants were represented by Mr. Sekabanja Edward Kato.

The High court has unlimited original jurisdiction in all matters.

See: Article 139(1) of the Constitution.

The Judicature Act, in section 14, on similar terms grants the same jurisdiction on the court.

In the exercise of that jurisdiction, the High Court has powers to grant such remedies absolutely or on such terms as it considers 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 one year and nine months; see Annextures “E2”, copies of his Care orders. and is therefore a child within the meaning of the Act.

In making any decision concerning a child, the welfare of the child is of paramount consideration. See: Section 3 and paragraph 1(b) of the First Schedule to the Children Act, Cap 59.

Issue No.1 – Whether the grant will be for the welfare of the child?

Mr. Sekabanja submitted that the child was abandoned by unknown persons in a trench in Entebbe and taken to Sanyu Babies’ Home by the Police when he was one week old. See: Annextures “E1”- report on the child from Sanyu Babies’ Home.

On 21/04/09, a Care order was made in respect of the infant to Sanyu Babies’ home, by the Family and Children Court of Mengo at Mwanga II Court – see Annextures “E3”.

Mr. Sekabanja submitted that when the applicants developed an interest in the infant, an advertisement was placed in both the New Vision and Bukedde news papers of 30-4-09, attached as Annextures “F” on the court file.

Sanyu Babies’ Home has provided the necessary consent to the applicants’ application. See Annextures ‘G’.

In view of the fact that the infant was abandoned, the parents are unknown and no one has come to claim the child since his picture was advertised in the local news papers, court is satisfied that the application if granted will be for the welfare and in the best interests of the child.

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

The applicants are Canadian citizens- see copies of their passports on the court file attached as Annextures - ‘A’

The applicants are married and have 6 children; 2 biological and 4 from the second applicant’s previous marriage. See copies of their Marriage Certificate attached as Annextures ‘B’.

Counsel for the applicant contended that three of the children of the applicants are old and are on their own and the last 3 aged 20 years, 13 years and 10 years still live at home with the applicants (see copy of their Home Study report attached as Annextures ‘C’).

The first applicant works as a judge of the Superior Court of Ontario – Canada. Copies of his appointment letters are attached hereto as Annextures ‘D1” and ‘D2” respectively to his affidavit.

The second applicant is a stay home mum but has done missionary work with Loving One by One, associated with Sowers International.

The applicants have no criminal record and copies of their Criminal clearance Certificates are attached on the file as
Annextures ‘H’ and “I” respectively.

Mr. Sekabanja argued that, the applicants have the financial means to cater for the needs of the child. See copies of the applicants’ income and tax permit returns showing their financial capability as Annexure ‘J’.

The Probation and Social Welfare Officer, Kampala, Ms Caroline Bakusha confirms that obtaining legal guardianship for the infant is for his welfare and benefit - See report, attached as Annexures "I" and 'H' respectively.

In view of the above, court is of the opinion that the applicants are suitable for guardianship for the child.

Consequently, the application is granted in the following terms and conditions:-

1. The applicants are appointed legal guardians of Kirabo Joseph, 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 and the Ugandan Embassy in Ottawa.
4. The applicants are directed to obtain a Ugandan passport for the child and renew it from time to time as required by the law.
5. The applicants are permitted to travel out of the country with the child.
6. The applicants are directed to register the order with the authority responsible for children in Montreal, Canada and to file a report with the Registrar Family Division, High Court, Kampala, once every year, on the state of the welfare of the child 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

8/10/09

Present:

1. Mr. Kato Sekabanja for the Applicants.
2. The first Applicant
3. Nalongo Nandaula – Court Clerk
4. Nyakwebara Elizabeth – Research Assistant