

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

FAMILY CAUSE NO. 129 OF 2009

IN THE MATTER OF NAMUGAYA IMMACULATE (CHILD)

AND

**IN THE MATTER OF AN APPLICATION FOR APPOINTMENT AS LEGAL
GUARDIANS OF NAMUGAYA IMMACULATE (11 YEARS) BY RONALD BRIAN
ECKLEBARGER AND MELANIE RAE ECKLEBARGER**

BEFORE: HON. LADY JUSTICE MARGARET C. OGULI OUMO

RULING:

The applicant brings 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 for orders that;

1. They be appointed legal guardians Namugaya Immaculate.
2. Costs of the application be provided for.

The application is supported by the Statutory Declarations of the applicants dated 25th August 2009, the affidavits of Masoga Janet, the biological mother of the child dated 16th September 2009, Loy Woltala, the maternal great grandmother of the child dated 16th September 2009, Peter Kabadize, the LCI chairman of Lwambogo, where the child lives with her great grandmother dated 18th September 2009, William Edema the Administrator of M/s Welcome Home Children's Ministries, the home that has been providing for the child dated 16th September 2009 and that of Opio Oumo, the Probation Officer Jinja District dated 16th September 2009.

The grounds of the application are:-

1. That the child's mother and great grandmother are peasants who cannot provide for her.
2. That the where about of the child's father is not known.
3. That the child is paralyzed and requires special medical treatment.
4. That the applicants wish to provide the child with a home, parental love and care.
5. That the application is for the welfare and benefit of the child.

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

The High Court has original unlimited jurisdiction over all matters in Uganda.

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

The Judicature Act, section 14 on similar terms gives the court similar jurisdiction.

In the exercise of that jurisdiction, the High Court has powers to grant remedies absolutely or on such terms as it thinks fit.

See: Section 33 of the Judicature Act.

Similarly, under S.98 of Civil Procedure Act, the High 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 11 years of age – see copy of the birth certificate on the court file attached as Annexure "A" to the great grandmother's affidavit.

Mr. Nyombi Peter submitted that, in making any decision concerning a child, the welfare of the child is of paramount consideration. See also, section 3 and paragraph 1(b) of the First Schedule to the Children Act.

Issue No. 1 – whether the grant will be for the welfare of the child and in her best interest?

Mr. Nyombi submitted that the child is 11 years old and has been under the custody of the maternal grand matter since she was born. According to the Administrator of Welcome Home

Ministries, Mr. William Edema, Immaculate is paralysed – see also a copy of her medical report attached as Annexure ‘E’ to his affidavit and paragraph 4 of his affidavit. This is confirmed by the great grandmother, who in her affidavit deponed that the child was paralyzed and required specialized medical treatment.

Counsel for the applicant submitted that the where about of the child’s father is un known and the mother surrendered the child to the grandmother who in turn took the child to Welcome Home Ministries for assistance.

The mother and great grandmother are both peasants who cannot provide for the child who is in a wheel chair.

Mr. Nyombi submitted that the applicants are willing to take care of the child.

In view of the fact that the child is paralysed and needs someone to provide for her special medical treatment which her mother and great grandmother cannot provide for and that the father’s where about is not known, court is of the opinion that the grant will be for the welfare and in the best interests of the child.

The second issue is whether the applicants are suitable guardians for the child?

Mr. Nyombi submitted that the applicants are American citizens and copies of their passports are attached to their respective statutory declarations as Annextures ‘A’

The applicants are married and a copy of their Marriage Certificate is attached to Ronald Ecklebarger’s statutory declaration as annexure “B”.

Counsel contended that the first applicant is a Pastor with Heartland Church and a notarized copy of the letter from the Church is attached as Annexed ‘C’ to his Statutory Declaration.

The second applicant is a home maker but has a clearing business called **Angel for Everything**.

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

Counsel for the applicants contended that both the applicants have no criminal record. Notarized copies of their criminal clearance certificates are attached to their respective statutory declarations as Annexures 'F' and 'B'.

Mr. Nyombi argued that both applicants are of good mental and physical health – see copies of their health certificates attached as Annexures "G" to their respective statutory declarations on the court file. That the applicants are ready and willing to provide the child with a home, parental love and care.

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

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

1. The applicants are appointed legal guardians of the child, Immaculate Namugaya, with full parental rights and responsibilities.
2. The applicants are directed to register the order with the Registrar of Documents, Uganda Registration Service 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 directed 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 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

14/10/09

Present:

1. Ms. Rebecca Mugabi-Counsel for the applicant
2. The first Applicant
3. Nalongo Nanduala – Court Clerk
4. Nyakwebara Elizabeth – Research Assistant.