

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

FAMILY CAUSE NO. 103 OF 2009

IN THE MATTER OF THE CHILDREN ACT, CAP 59

AND

IN THE MATTER OF ASHIRAF (AN INFANT)

AND

**IN THE MATTER OF AN APPLICATION FOR LEGAL GUARDIANSHIP BY KECK
DANIEL SCOTT AND KECK DANA MC DAVID**

BEFORE: HON. LADY JUSTICE MARGARET C. OGULI OUMO

RULING:

The applicants bring this application by Notice of Motion, under section 33 of the Judicature Act, Cap 13, section 98 of the Civil Procedure Act, Cap 71 and section 3 of the Children Act, Cap 59 in which the applicants are praying for the following orders:-

1. That the applicants be appointed legal guardians of Ashraf.

The application is supported by the affidavit of the first applicant dated the 3rd August, 2009.

The grounds of the application are as follows:-

1. That the child is in need of proper care and protection.
2. That the applicants are ready, willing and able to provide the child with a loving home and family.

3. That the applicants are responsible persons working for gain and capable of catering for the child's needs.
4. That it is in the best interest of the child that the applicants are granted legal guardianship of the said child.
5. That it is fair, just and equitable that this application is allowed.

At the hearing of the application, the applicants were represented by Mr. Nicholas Opiyo.

The High court has unlimited original jurisdiction in all matters.

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

Section 14 of the Judicature Act, on similar terms grants the same jurisdiction to the court

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

See Section 33 Judicature Act.

The High Court has inherent powers to make such orders as are necessary in the interests of justice and to prevent the abuse of court process.

See: Section 98 of the Civil Procedure Act.

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

A child has been defined as any person below 18 years of age.

See: Section 2 of the Children Act.

The child here is 4 ½ years of age, as evidenced by the Application for his care made on 10th June 2009, attached as Annexure “D” to the first applicant’s affidavit.

Counsel for the applicants submitted that the biological parents of the child are unknown because the infant was abandoned by unknown persons in Jinja town on 30-07-2007. See Annexure ‘B’- the letter from the Central Police Station in Jinja referring the child to the Probation and Social Welfare Office, Jinja. The letter was subsequently endorsed by the Probation Officer.

That the Family and Children Court, Jinja subsequently placed the child with Amani Baby cottage. See Annexure “C”, the Care Order granted on 26th March 2008.

Mr. Nicholas Opiyo, counsel for the applicants contended that during one of their visits to Uganda, the applicants heard about the infant and applied to be granted a Care Order in respect of the infant which was granted on 17th June 2009. See Annexure “D”, the Care Order. That they have been caring for the child since June 2009 as per Annexure ‘D’. Mr. Opiyo argued that the said infant is in need of a loving and caring home which the applicants are willing to provide.

In view of the fact that the child was abandoned and his parents are unknown, and the applicants are willing and able to provide him a home, parental love and protection, it will be for the welfare of the child, under section 3 of the Children Act – Cap 59, to grant the applicants a guardianship Order.

Issue No. 2 whether the applicants are suitable guardians?

The applicants are American citizens, as evidenced by copies of their passports on the court file attached as Annexure “A”.

Counsel for the applicants submitted that the applicants have 3 children of their own.

In view of the above, court finds that the child will not have difficulty integrating into the applicant’s family.

The applicants have undergone a Home Study in their country and been found suitable for guardianship purposes. See Annexure “E” on the court file.

Mr. Opiyo submitted that the Tennessee Bureau of Investigations ran a criminal check on the applicants, which indicates that they are clear of any criminal record – Annexure ‘F’ is their Criminal Clearance Certificate.

The first applicant is gainfully employed at the Christ Presbyterian Academy as a teacher and coach. See the letter from the employer. The second applicant is a full time house wife – see Annexure ‘E’, a copy of their home study.

In view of the above, court is satisfied that the applicants will be in a position to cater for the financial, emotional and psychological needs of the child and they will be suitable guardians for the child. Consequently, the application is allowed in the following terms and conditions:-

1. The applicants are granted legal guardianship of the infant Ashiraf with full parental rights and responsibilities.
2. The applicants are directed to register the order with Uganda Registration Service Bureau, Ministry of Justice and Constitutional Affairs, Kampala.
3. The applicants are directed to register the order with the United States Embassy in Kampala and the Ugandan Embassy in Washington DC.
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 in Tennessee, United States of America and to submit a report once every year to the

Registrar, Family Division High Court of Uganda at Kampala until the children are 18 years of age or until directed otherwise.

7. The Court makes no order as to costs.

Margaret C. Oguli Oumo

JUDGE

28/09/09

Present

1. Mr. Nicholas Opiyo-Counsel for the applicants
2. The 2nd applicant
3. Nalongo Nandaula-Court Clerk
4. Nyakwebara Elizabeth-Research Assistant