

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
FAMILY CAUSE NO. 125 OF 2009
IN THE MATTER OF TUMUSIME RONALD WILLIAMS (INFANT)

AND

**IN THE MATTER OF AN APPLICATION FOR APPOINTMENT AS LEGAL
GUARDIANS OF TUMUSIME RONALD WILLIAMS (AGED 7 MONTHS) BY MARTIN
DUFFY AND KATHRYN E DUFFY**

BEFORE: HON LADY JUSTICE MARGARET C. OUMO OGULI

RULING:

This is an application for legal guardianship, brought under Article 139(1) of the Constitution of the Republic of Uganda 1995, section 14, 33 and 39 of the Judicature Act Cap 13 and section 3 of the Children Act Cap 59 in which the applicants are seeking for following orders:

- a) That the applicants be appointed legal guardians of Tumisime Ronald Williams.
- b) That cost of the application be provided for.

The application is supported by the Statutory Declarations of the applicants dated 17th September, 2009; the affidavits of Barbara Nankya, the Administrator of Sanyu Babies Home, dated 17-09-2009 and that of Bankusha Caroline, the Probation and Social Welfare Officer-Kampala City Council dated 18-09-2009.

The grounds of the application are:-

1. That the infant was neglected by his mother and was found malnourished.
2. That the whereabouts of the infant's parents are not known.

3. That the infant is under the care and custody of Sanyu Babies' Home.
4. That the applicants wish to provide the infant with a home, parental love and care.
5. That this application is for the welfare and benefit of the infant.

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

The High Court has unlimited original jurisdiction in all matters.

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

The Judicature Act in Section 14 on similar terms grants the High court similar jurisdiction.

In the exercise of its jurisdiction, the High court has powers to make orders absolutely or on such terms as it thinks fit.

See : Section 33 of the Judicature Act.

A child has been defined as any person below 18 years of age, according to section 2 of the Children Act Cap 59.

The infant here is 1 year and 10 months old according to a letter from the Principal Medical Social worker, Mulago hospital attached as Annexure "D" to Barbra Nankya's affidavit on the court file 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.

Mr. Nyombi, counsel for the applicants, submitted that this application is for the welfare and benefit of the said infant because of the following reasons:-

1. The mother had neglected and abandoned the child.

2. The child was looking malnourished.
3. The whereabouts of the parents are unknown.
4. The child is in the care of an institution and;
5. The applicants' family is willing to provide a home, parental care and a loving environment for the child to grow up in.

Mr. Nyombi submitted that the child was neglected by his mother and was found malnourished on the 3rd March, 2008. That the mother was reported to the Casualty Police Post, New Mulago and the infant was referred to Acute, Mulago Hospital – see Annexure “C” attached to Barbara Nankya’s affidavit. That upon the receipt of the report about the abandoned child, the O/C Children Protection Unit, Old Kampala referred the matter to Probation and Social Welfare Officer, at Mwanga II Road – See copy of his letter to that effect, attached as Annexure “C” to Barbara Nankya’s affidavit. That the infant was then transferred to the management of Sanyu Babies’ Home to take custody of the child – see custody order on the court file attached as Annexure “F” to Bankusha Caroline’s affidavit. The management of Sanyu Babies’ Home received the child on the 28th April, 2009 – see Annexure “D” to Barbara Nankya’s affidavit. Mr. Nyombi contended that on the 2nd October, 2008, the infant was committed to the care of Sanyu Babies Home – see Annexure “E” attached to Barbara Nankya’s affidavit.

In view of the above, court is of the view that the application if granted will be for the welfare and in the best interests of the child as it will give him the opportunity to grow up in a home with parents instead of an institution.

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

Mr. Nyombi, counsel for the applicants submitted that the applicants are American citizens and notarized copies of the relevant pages of their passports and birth certificates are attached to their respective, Statutory Declarations as Annexures “A” and “B”.

Martin Duffy is employed as a Director of Professional Services for Big Machines and a notarized copy reference letter from his employer is attached to his Statutory Declaration as

Annexure “B”. He is therefore in a position to provide financial assistance and take care of the needs of the child.

The wife, Kathryn is a full time home maker and both do not have a child. They will therefore be in a position to attend to the emotional and psychological needs of the child.

The applicants have no criminal record as evidenced by the Criminal Clearance Certificate attached to their Statutory Declarations as Annexures “D” and “C” respectively. Mr. Nyombi contended that both applicants have never been convicted of child abuse. See copies of their clearance certificates attached as Annexures “E” and “D” to their Statutory Declarations respectively.

Counsel for the applicants submitted that both the applicants are physically and mentally healthy. Health certificates to that effect are attached to their respective Statutory Declarations as Annexure “F” and “E”.

The Administrator, Sanyu babies’ Home, Ms Babra Nankya, has recommended the applicants as legal guardians as per paragraph 15 of her affidavit

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

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

1. The applicants are appointed legal guardians of the child, Tumusime Ronald Williams, 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 the 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 required by the law.
5. The applicants are permitted to travel out of Uganda with the child.
6. The applicants are directed to register the child with the authority responsible for children in Peerfield Illinois, and to file a report, every one year, with the Registrar Family Division – High Court of Uganda, regarding the state of the welfare of the child and 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. Oumo Oguli

Judge

28/09/2009

Present

1. Mr. Nyombi Peter-Counsel for the applicants
2. Ms.Dora Mirembe-Counsel for the applicants
3. Mr. Martin Duffy-2nd applicant
4. Nalongo Nadaula-Court Clerk

5. Nyakwebara Elizabeth-Research Assistant