

**THE REPUBLIC OF UGANDA**

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

**FAMILY CAUSE NO. 102 OF 2009**

**IN THE MATTER OF THE CHILDREN ACT, CAP 59**

**AND IN THE MATTER OF ARNOLD KISSEKKA (INFANT)**

**IN THE MATTER OF AN APPLICATION FOR LEGAL GUARDIANSHIP BY TROUP**

**JUSTINE BRADLEY AND TROUP KATIE MARIE**

**BEFORE: THE HON. LADY JUSTICE MARGARET C. OGULI OUMO**

**RULING**

This is an application brought by Notice of Motion under section 33 of the Judicature Act, Cap 17, Section 98 of the civil Procedure Act, Cap 71, section 3 of the Children Act, Cap 59 in which the applicant is seeking for the following orders;

1. That the applicants be appointed legal guardians of Arnold Kissekka(infant)

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

The grounds of the application are:

1. That the child is in need of proper care and protection.
2. That the applicants are ready and willing 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 also fair, just and equitable that this application be allowed.

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

The High Court has original jurisdiction in all matters

**See: Article 139 of the Constitution of Uganda, 1995**

Section 14 Judicature Act on similar terms grants the same powers to the High Court.

Under section 33 of the Judicature Act, the High Court has powers to grant remedies absolutely or on such terms as it thinks fit.

The High Court has inherent powers to grant such remedies as are necessary in the interest of justice and to prevent the abuse of court process.

**See: Section 98 of the Civil Procedure Act.**

**Issue No. 1: - Whether the application is for the welfare and in the best interests of the child?**

In making any decision concerning a child, that is, anybody below the age of 18 years of age, his or her welfare is of paramount consideration.

**See Section 3 and paragraph 1(b) of the first schedule to the Children Act.**

Section 2 of the Children Act defines a child as anybody below the age of 18 years.

The child here is 5 years old – see Annexure ‘B’, letter from the Principal Medical Social worker, Mulago Hospital and Annexure “D2” his Birth Certificate.

According to the report from Mulago Hospital, the child was abandoned by his father on the 17/02/06, by one Sserwada Moses after he left a note saying he was unable to look after the child, the reason he decided to abandon him in hospital. On 21/02/06 radio announcements were put up calling for the relatives but nobody has turned up to claim the child. The child was placed in the Amani Baby Cottage by the Family and Children Court at Jinja on 18<sup>th</sup> June 2009.

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.

**Issue No. 2: whether the applicants are suitable guardians for the child?**

Mr. Opiyo learned counsel for the applicants, submitted that the applicants are American citizens, - see photocopies of their passports marked Annexure 'A' on the court file.

The applicants are gainfully employed; the first applicant with Mifflinburg Bank and Trust Company as a Community Office Manager– See Annexure 'H', and the second applicant is employed as a Receptionist with Sholley Insurance Agency-see letter from her employer on the court file.

Mr. Opiyo contended that the applicants have undergone a home study in their home country carried out by Adoption Associates and have been found suitable to act as guardians. See Annexure 'F'.

The applicants are a married couple - see a copy of their marriage certificate on the court file, marked as Annexure 'A'.

The applicants applied for and were granted a care order on the 13<sup>th</sup> November, 2006 – See Annexure 'C' on the court file.

The applicants have no criminal record – see report of the Home study attached on the court file.

The applicants are willing and ready to provide the child with a loving home and family.

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

Consequently, the application is granted. The applicants are appointed legal guardians of Arnold Kiseka (infant) in the following terms and conditions.

1. The applicants are directed to register the order with the Registrar of Documents, Uganda Registration Service Bureau, Ministry of Justice and Constitutional Affairs, Kampala.
2. The applicants are directed to register the order with the United States Embassy in Kampala and the Ugandan Embassy in Washington.
3. 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.
4. The applicants are permitted to travel out of Uganda with the child.
5. The applicants are directed to register the order with the authority responsible for children in their home town in Mifflingburg, Pennsylvania, United States of America and to file a report with the Registrar, Family Division, High court, every one year regarding the welfare of the child and to continue to do so until the child is 18 years or until directed otherwise.

The court makes no orders as to costs.

**Margaret C, Oguli Oumo**

**Judge**

**8/09/2009**

**Present:**

1. Mr. Nicholas Opiyo-counsel for the applicants
2. The applicants
3. Elizabeth Nyakwebara-Research Assistant

