

**THE REPUBLIC OF UGANDA**

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

**FAMILY CAUSE NO. 126 OF 2009**

**IN THE MATTER OF MUGALU RAYMOND (INFANT)**

**AND**

**IN THE MATTER OF AN APPLICATION FOR APPOINTMENT AS THE LEGAL  
GUARDIANS OF MUGALU RAYMOND (AGED 2 YEARS) BY ANDREW MARCUS  
AND STEPHANIE MOORE**

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

**RULING:**

This is an application for legal guardianship by Notice of Motion brought 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 in which the applicants are seeking for the following orders:-

1. That Andrew Marcus Moore and Stephanie Moore be appointed legal guardians of Mugalu Raymond.
2. That costs of the application be provided for.

The application is supported by the Statutory Declarations of the first and second applicants dated 21<sup>st</sup> September, 2009, the affidavits of Barbara Nankya, the Administrator of Sanyu Babies' Home dated 19<sup>th</sup> September, 2009, Ayub Twaha , a Tutor at Paramedical School, Mulago, Kampala, dated 16<sup>th</sup> September, 2009, Tyaba Freda, the Vice Chairperson LCI Kibawo Village Local Council I Mulago Parish, Kawempe Municipality, Kampala and Bankusha Caroline, the Probation and Social Welfare Officer Kampala Central Division.

The grounds of the application are:-

1. That the infant was abandoned in a trench outside Mulago Hospital by some unknown person.
2. That the parents of the infant are not known.
3. That the infant is under the care of Sanyu Babies' Home.
4. That the applicants wish to provided the infant with a home, parental love and care.
5. That the application is for the welfare and benefit of the infant.

At the hearing of the application, the applicant was represented by Mr. Peter Nyombi, assisted by Ms. Dora Mirembe.

The High Court under Article 139(1) of the constitution, 1995 has unlimited original jurisdiction in all matters. The Judicature Act on similar terms gives the same jurisdiction to the court.

**See: Section 14 of the Judicature Act.**

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 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 2 years and 5 months old according to annexure "D", the Receipt Form of the child at Sanyu Babie's home, attached to Ms. Nankya's affidavit.

**The first issue is whether the grant will be for the welfare and in the best interests of the child?**

Under section 3 and paragraph 1(b) of the first Schedule to the Children Act, in making any decision concerning a child, the welfare of the child is of paramount consideration.

Counsel for the applicants submitted that the infant was found abandoned on 11-6-07 by one Twaha Ayub at 12.30 p.m. in a trench outside Mulago hospital by an unknown person which is confirmed by Ayub Twaha in paragraph 3 of his affidavit. On the 11-06-07, the infant was taken to Sanyu Babies Home for safe custody by Ayub Twaha as evidenced by the Receipt Form against which the child was received as evidenced by Annexure 'D' attached to Barbara Nankya's affidavit and paragraph 8 of her affidavit.

On the 12-11-08, the infant was committed to the Care of Sanyu Babies' Home by the Family and Children Court of Nakawa at Mwanga II Road, Kampala. See copy of the Order Annexed as 'E' to Ms. Nankya's affidavit.

In an attempt to establish whether there was any claimant to the child, the photograph of the child was advertised in the news paper and a copy of the New Vision news paper is attached as Annexure 'F' 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 of the child who was abandoned in a trench and whose parents are not known.

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

Counsel for the applicants submitted that both applicants are American citizens. See copies of their notarized passports annexed as 'A' and 'B' to their respective Statutory Declarations.

The applicants are a married couple and a notarized copy of their Marriage Certificate is attached to Andrew Moore's Statutory Declaration as Annexure 'C'.

Counsel for the applicant, Mr, Peter Nyombi submitted that the applicants live at 1316 Shadowood Trail, Marietta, Georgia, 30066, USA. The applicants have one child of 3 years.

The first applicant is employed as a General Manager of the Fairfield Inn & Suites Kennesaw at Remington Hotel Group and a notarized copy of the letter from his employer is attached to his Statutory Declaration as Annexure 'D'.

The second applicant, Stephanie Ann Moore is a full time home maker.

Mr. Nyombi contended that the applicants are jointly applying to be appointed legal guardians of the infant.

The applicants' home has been recommended as suitable for adoptive purposes. See a copy of the International Home Study attached as Annexure 'E' to the first applicant's Statutory Declaration.

Learned counsel submitted that the applicants have never been convicted of child abuse – see Annexures 'F' and 'C'. That the applicants have no criminal record and notarized copies of their Certificates of Good conduct are attached to their respective Statutory Declarations as Annexures 'G' and 'E'. Mr. Nyombi contended that the applicants are physically and mentally healthy and have medical certificates to that effect attached to their respective Statutory Declarations as Annexures 'H' and 'D'.

Mr. Nyombi contended that in her affidavit, Caroline Bankusha, the Probation and Social Welfare Officer, Kampala City Council confirmed and recommended the applicants as suitable guardians for the child.

In view of the fact that the applicants have a home, are married and have a child of their own, the child will have no problem integrating into the applicants' family. The applicants are in a financial position to cater for the welfare needs of the child and to cater for her physical and emotional needs. In view of the above, 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 infant, Mugalu Raymond.
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 the country with the child.
6. The applicants are directed to register the order with the authority responsible for children in Marietta Georgia, U.S.A. and to file a report once every year, with the Registrar, Family Division, High Court of Uganda regarding the state of the welfare of the child and to continue doing so until the child is 18 years of age or until directed otherwise.
7. The court makes no orders as to costs.

**MARGARET C. OGULI OUMO**

**JUDGE**

**30/9/09**

Present

1. Ms.Dora Mirembe for the applicants
2. The 2<sup>nd</sup> applicant
3. Nalongo Nadaula-Court Clerk
4. Nyakwebara Elizabeth-Research Assistant

