

**THE REPUBLIC OF UGANDA**

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

**FAMILY CAUSE NO. 115 OF 2009**

**IN THE MATTER OF JAMES KAGGWA (AN INFANT)**

**AND**

**IN THE MATTER OF AN APPLICATION FOR GAURDIANSHIP BY JAMES HESLE P  
AND CAREY HELSEP OF THE SAID INFANT.**

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

**RULING:**

The applicant brings this application by notice of motion under Article 139 of the Constitution of the Republic of Uganda, 1995, sections 2,3,4,5 and 6 and the first schedule to the Children Act Cap 59; sections 14, 33 and 39 of the Judicature Act cap 13 and section 98 of the Civil Procedure Act Cap 59 and Orders 52 r 1 and 3 of the Civil Procedure Rules, S1. 71-1, in which the applicants are seeking for the following orders:-

1. That the honorable Court be pleased to appoint them as legal guardians in respect of the infant, James Kagwa.
2. That the costs of the application be borne by the applicants.

The application is supported by the affidavits of the applicants dated 16<sup>th</sup> July, 2009.

The grounds of the application are:-

- (i) That the applicants have been nurturing and catering for the infant child under the supervision of a Social Welfare Officer.
- (ii) That the child's parents are dead and there is no relative to take care of the infant child.
- (iii) That the applicants are possessed with the willingness and capacity to look after the infant child.

(iv) That it is in the best interest of the infant child and his welfare that the order be made.

At the hearing of the application, the applicants were represented by Mr. Sebuta Hamza.

The High court has unlimited original jurisdiction in all matters.

**See: Article 139(1) of the constitution of Uganda**

**See :Section 14 of the Judicature Act, Cap 13.**

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

Under section 98 of the Civil Procedure Act, the High Court has inherent 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 about 3 years old and therefore a child within the meaning of the Act.

**Issue no. 1 –Whether the application is for the welfare of the child and in his best interest?**

In making any decision concerning a child, his or her welfare is of paramount importance.

**See: Section 3 and Paragraph 1(b) of the First Schedule to the Children Act.**

Counsel for the applicant, Mr. Sebuta submitted that the infant's parents are dead and copies of their Death Certificates are attached as Annexures 'E' and 'F'. That the surviving relative of the infant, a grandmother is elderly, with no source of income – A copy of her consent to the application is attached hereto to the Application on the court file.

Mr. Sebuta, counsel for the applicants contended that the applicants have been meeting all the infant's expenses for a period of over 1½ years involving his upkeep and medical bills.

Counsel for the applicants submitted that, initially the child was staying with the grandmother but for at least 2 years, he has been staying at an orphanage at Kabowa known as A.F.A.A Orphanage, whose Director was in court and the applicants heard of the infant's plight through

the Director of the orphanage. That it is in the best interest of the child that the application is granted.

In view of the fact that the child is a total orphan and there is no one willing and able to look after him, court is of the view that the application if granted, will be for the welfare and benefit of the child and in his best interests.

**Issue No. 2 – Whether the applicants are suitable guardians for the child?**

The applicants are citizens of the United States of America – See copies of their passports on the court file- see Annexure “A” on the court file.

The applicants are a married couple. See Annexure “B” which is a copy of their Marriage Certificate. The applicants have 3 biological children aged 18, 16 and 3 years of age. The child will therefore not have a problem integrating into the family of the applicants.

The applicants are employed in the law firm, Steptoe and Johnson, Attorneys at Law in the USA – see a copy of the letter from their employer attached as Annexure ‘C’ on the court file.

The first applicant is employed as a Lawyer and the second as a Librarian.

Counsel for the applicants argued that the applicants have no history of any drug abuse, alcoholism, sexual abuse, child abuse or any conduct that would render them unfit to be guardians of the infant.

The applicants have undergone a Home study in their country and have been recommended as suitable guardians. A copy of their Home Study is on the court file.

In view of the above, court finds that the applicants are suitable guardians and the application is allowed in the following terms and conditions:-

1. The applicants are appointed guardians of James Kagwa with full parental rights and responsibilities.
2. The applicants are directed to register the order with the Registrar of Documents, Uganda Registration Services Bureau, Ministry of Justice and Constitutional Affairs, Kampala.

3. The applicants are directed to register the orders 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 renew it from time as directed by the law.
5. The applicants are directed to register the order with the authority, responsible for children in Bridgepost West Virginia, USA and to file a report once every year, with the Registrar, Family Division, High Court of Uganda, on the state of the welfare of the child until the child is 18 years of age or until directed otherwise.
6. The applicants are permitted to travel out of Uganda with the child

The court makes no order as to costs.

**Margaret C. Oguli Oumo**

**Judge**

**18<sup>th</sup> September 2009.**

**Present**

1. Sebuta Hamza –Counsel for the applicants.
2. Mr. James Heslep-The first applicants
3. Nalongo Nandaula-Court Clerk
4. Nyakwebara Elizabeth-Research Assistant.