

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

FAMILY CAUSE NO. 179 OF 2009

IN THE MATTER OF THE CHILDREN ACT CAP 59

AND

**IN THE MATTER OF AN APPLICATION FOR LEGAL GUARDIANSHIP OF
RICHARD ATUKUNDA (CHILD) BY JAMES KEITH RICHARDS AND SALEM
RAYYE MILLER**

BEFORE: HON. LADY JUSTICE MARGARET C. OGULI OUMO

RULING:

The applicants, citizens of the United State of America, bring this application under Article 139(1) of the Constitution of Uganda, 1995, Section 14 of the Judicature Act, Cap 13, sections 2, 3, 4, 5 and 6 of the Children Act, Cap 59 and order 52 r 1 and 3 of the Civil Procedure Rules, SI 71-1 in which they are seeking for the following orders that:

1. The applicants be appointed legal guardians of the child Richard Atukunda with full parental rights and responsibilities.
2. Consequent upon being appointed legal guardians of the child, the applicants be at liberty to obtain a Ugandan passport for the child and be permitted to travel with the child to the United States of America where the applicants reside in order to provide parental guidance and cater for the child's education, shelter clothing, medical needs and other basic needs of life.
3. Costs of the application be provided for.

The application is supported by the affidavits of James Keith Richards and Salem Raye Miller dated the 4th November, 2009.

The grounds of the application are briefly as follows:-

1. That the child was abandoned and efforts to trace for the child's parents and relatives have proved futile.
2. That the child being in need of care and protection was committed to the care of Ibanda Babies Home.
3. That the applicants are ready and willing to provide the child with love, warmth and a healthy family environment and eventually adopt the child in the United States of America.
4. That the applicants have been found to be suitable adoptive parents by the Probation and Welfare Officer in their country of origin.
5. That it is in the best interests of the child that the applicants be granted legal guardianship over him.

At the hearing of the application, the applicants were represented by Mr. Obiro Ekirapa Isaac.

Jurisdiction:

The High Court has original unlimited jurisdiction over all matters.

See: Article 139(1) of the Constitution.

See: Section 14 of the Judicature Act.

In the exercise of that jurisdiction, 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.

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

Issue No. 1 – 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 is of paramount consideration.

Counsel for the applicants, Mr. Obiro Ekirapa, submitted that the child was found abandoned in Kyamuhunga, Kasese, Bushenyi road by a boda boda rider after a heavy down pour, lying in a paddle of muddy water. That the boda boda cyclist took the child to the Probation Officer Bushenyi District Local Government at the time called Tumugirizize Advine. That the Probation Officer tried in vain to trace the relatives/parents of the child and on 4th April 2008, he requested the warder of Ibanda Babies Home to admit the child as being in need of care and protection – a copy of the admission from to Ibanda Babies Home is attached on the Court file.

Mr. Ekirapa submitted that further efforts to trace the parents of the child were extended to the Orumuri News paper of 2/8/09 which is widely read in the region. See: a copy of the paper attached as Annexure “C”. No one has turned up claiming the Child. That other relatives of the child are unknown as the child was abandoned. Since then, the child has been under the care of Ibanda Babies Home, but the services of the home are right now too constrained to cater for the child’s needs. That the applicants have expressed the willingness to take care of the child.

In view of the above, court is of the view that the grant if made will be in the best interests of the child and for his welfare.

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

Mr. Ekirapa contended that the applicants are American citizens. Copies of their passport copies are attached as Annexures “A” and “I” to their affidavits.

That the applicants are married and a copy of their Marriage Certificate is attached as Annexure “B”.

The 1st applicant holds a Bachelor of Music Degree – His Certificate is attached as Annexure “D”. He is currently employed as a teacher at Warren Local School District as an Art/Music/Physical Education Elementary teacher. A reference letter from his employers is attached as Annexure “C”.

The second applicant is a Nanny. A reference letter from her employers is attached as Annexure “J” to her affidavit.

The applicants have undergone a Home study attached as Annexure “F” and the report confirms that the applicants are fit and proper persons to cater for the child.

Mr. Ekirapa submitted that the applicants have undergone a criminal record check and according to their criminal checks attached as Annextures “G” & “K”, they have no criminal record.

Learned Counsel submitted that the applicants are in good health. Annextures “H” and “L” are their good medical reports.

He further submitted that the United States government will respect the order and allow the child to immigrate to the US if the application is granted to them.

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, **JAMES KEITH RICHARDS** and **SALEM RAYYE MILLER** are appointed legal guardians of **RICHARD ATUKUNDA** 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 order with United States Embassy in Kampala and the Ugandan Embassy in Washington D.C.
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 so that they can fulfill their parental rights and responsibilities within the terms of Sections 4 and 5 of the Children Act and Article 34(1) and (2) of the Constitution of Uganda.
6. The applicants are directed to register the order with the authority responsible for children and family welfare in Anthens, Ohio and to file a report once every year regarding the state of welfare and development of the child to the Registrar Family Division, High Court, Kampala beginning 31st June 2010 until the child is 18 years of age or until directed otherwise.
7. The court makes no order as to costs.

Margaret C. Oguli Oumo

JUDGE

11/2/2010

Present:

1. Mr. Ekirapa , counsel for the applicants
2. Nalongo Nandaula, court clerk
3. Nyakwebara Elizabeth, Research Assistant