

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

FAMILY CAUSE NO. 175 OF 2010

IN THE MATTER OF KISAKYE MATHEW (INFANT)

AND

**IN THE MATTER OF AN APPLICATION FOR APPOINTMENT AS LEGAL
GUARDIANS OF KISAKYE MATHEW (AGED 2 YEARS) BY SAMUEL LUCAS JOBE
AND JOY COLLEEN JOBE**

BEFORE: HON. LADY JUSTICE MARGARET C. OGULI OUMO

RULING:

The applicants bring this application under **Article 139 (1)** of the Constitution of the Republic of Uganda, **section 14, 33 and 39** of the Judicature Act, cap 13 and **section 3** of the Children Act, cap 59 for orders that:-

- a) Samuel Lucas Jobe and Joy colleen Jobe be appointed legal guardians of Kisakye Mathew.
- b) That the infant be allowed to migrate to the USA to live with the applicants.

The application is supported by the Statutory declaration of the applicants, the affidavit of the Ken Mulago, director of M/s New Hope Ministries, the officer in charge of the child and Family Protection Unit, Busia Police Station, Nyebaze Evah and that of the Probation and Social Welfare Officer Busia district Local Government, Julius Ogallo.

The grounds of the application are as follows:-

1. That the infant was found abandoned by unknown people.
2. That the parents of the infants are unknown and there are no known relatives of the infant.

3. That the applicants wish to provide the infant with emotional and psychological needs and to give him parental love and care.
4. That the application is for the welfare and benefit of the infant.

At the hearing of the application, the applicants were represented by Ms. Dora Mirembe.

The High court has original unlimited jurisdiction over all matters in Uganda. This is provided for under **Article 139** of the Constitution and **Section 14** of the Judicature Act.

In the exercise of its jurisdiction, the court has powers to grant remedies absolutely or on such terms as it thinks fit. This has been set out in **Section 33** of the Judicature Act, Cap 13.

Under **section 2** of the children Act, a child has been defined as any person below 18 years of age.

The infant here is aged 2 years of age as seen in Annexure “C1” on the court record from the Family Protection Unit, Busia dated 1/05/2010. He is therefore a child within the meaning of the Act.

Issue No. 1 – whether the grant is for the welfare and in the best interest of the child?

Under **section 3** and **Paragraph 1(b)** of the children Act, in making any decision concerning a child, the welfare of the child is of paramount importance.

Counsel for the applicants submitted that, the child was abandoned on the 10th may, 2010 at Busia Municipality.

That Kisakye Mathew was referred to M/S New Hope Ministries for temporary care and support by the Senior Probation and Social welfare Officer, Busia District and on 11th may, 2010, and he could not speak or explain anything.

Counsel for the applicants submitted at Daniel Mulago, the director of New Hope Ministries was given the child – Mathew Kisakye for temporary care and support.

That on 21st May, 2010 , a care order placing the child in the care of New Hope Ministries was issued and a copy to that effect is marked Annexure “E” on the court record.

Ms. Dora Mirembe submitted that, the whereabouts of the infant's parents /relatives are not known. Announcements were run on a Busia radio in Busia in an attempt to trace the next of kin but this proved futile. Copies of the receipts in respect of the radio announcements are attached as Annexure "G1".

Ms. Dora further submitted that, advertisements were also run in the Monitor Newspaper in respect of the child but no one has come up to claim the child. This is confirmed by Annexure "G2".

That the applicants have been supporting the child since they learnt of his plight, through the organization and have been supporting his basic needs.

Counsel for the applicant submitted that, Daniel Mulago has no resources or income to enable him sustain the infant and he has his own family responsibilities and that New Hope Ministries also depends on well wishers and donors for his survival and upkeep of the children that the organization supports.

In view of the above, court is of the view that, the application if granted will be for the welfare and in the best interest of the child, whom the applicants are willing and ready to provide a home, love and care.

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

Counsel for the applicants Ms. Dora Mirembe submitted that, the applicants are American citizens and copies of their passports are attached to the court record as Annexure "A".

The applicants are married and copies of their marriage certificate on the court record.

Counsel submitted that, the applicants have two biological children, Leslie Jane Jobe aged 6 years and Sola Adeline Jobe aged 5 years. Copies of their birth certificate are attached hereto on the court record.

That the first applicant is gainfully employed as a pilot with the United States Air force and a copy of his employment letter is attached as Annexure "B".

The second applicant his wife of a stay home mum.

Counsel submitted that the applicants heard about the child from Ken Daniel Mulago, who is Director, New Hope ministries and have been providing for the child, through the organization.

That the applicants have undergone a home study and their home was recommended as suitable for adoptive purposes. A home study report is marked Annex “E” on Joy’s affidavit.

That the applicants wish to subsequently adopt the child in the USA, where they can meet his emotional and psychological needs and to provide him a home, medical care, parental love, education and other necessities of life.

Counsel submitted that, the applicants have never been convicted of the offence of child abuse and notarized copies of their clearance certificates are attached as Annexure “C1” and “C2” respectively. The applicants are physically and mentally healthy and notarized copies of their medical certificates to that effect are attached as Annexure “D”.

In view of the above, court is of the opinion that, the applicants are suitable guardians for the child. The child is a person with no known parents/relatives and there is no one in Uganda or institution willing and ready to take care of him and provide him with sustainable welfare and benefits.

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

1. The applicants, **Samuel Lucas Jobe and Joy Colleen Jobe** are appointed legal guardians of the child, **Kisakye Mathew**.
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 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 to time as required by the law.
5. The applicants are permitted to travel out of Uganda with the child in order to be able to discharge their parental rights and responsibilities.

6. The applicants are permitted to adopt the child in the USA, so that they can be able to fix his residency, and the child can take advantage of the benefits that accrue to biological and adoptive children for his welfare and best interest.
7. The applicants are directed to register the order with the authority responsible for family and children welfare in Washington, and file a report once every year to the Registrar Family Division, High Court, Kampala, regarding the state of the welfare and development of the child until the child is 18 years of age or until directed otherwise.
8. The court makes no order as to costs.

MARGARET C.OGULI OUMO

JUDGE

13/10/2010

Present:

1. Tindiwegyi Gorretti, for Dora Mirembe.
2. The 2nd applicant
3. Betty Lunkuse – court clerk
4. Oliver Nantamu – Research Assistant.