

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

FAMILY CAUSE NO. 189 OF 2010

IN THE MATTER OF JOYCE KUSIIMA (CHILD)

AND

**IN THE MATTER OF AN APPLICATION FOR LEGAL GUARDIANSHIP BY SCOTT
MATEW BYERLY AND RACHEL CHRISTINE BYERLY**

BEFORE: HON. LADY JUSTICE MARGARET C OGULI OUMO

RULING:

The applicants Mattew Byerly and Rachel Christine Byerly, bring this application under, **Article 139 (1), 34(1) and (2)** of the constitution of Uganda 1995, **sections 14, 33 and 39** of the Judicature act cap.13; **sections 2, 3, 4, 5 and 6** of the Children Act cap.59; and **Orders 52 r1 and 2** of the Civil Procedure Rules for Orders that:-

1. The applicants be appointed legal guardians of Joyce Kusiima.
2. The applicants be permitted to travel outside Uganda to fulfill their parental responsibilities.

The application is supported by the affidavit of the First Applicant dated 9th August, 2010, of Dorah Andezu, and the report of the Probation and Welfare Officer, Kampala.

The grounds of the application are as follows:-

1. That the child, Joyce Kusiima was abandoned by unknown persons at United Christians Church located in Makerere – Kikoni on the 5th day of September, 2004.
2. That the child's parents are unknown and all attempts to locate them have proved futile.

3. That the child is now in the care and custody of open Door a children's home situate in Mengo – Kampala.
4. That the child, Joseph Kusiima is a vulnerable child who needs parental care.
5. That other than the applicants, there is no one who is willing and ready to take up guardianship with a view of adopting them eventually.

At the hearing of the application, the applicant was represented by Mr. Isaac Mugume.

The High court has original unlimited jurisdiction in all matters.

See: Article 139(1) of the constitution, and

Section 14 of the Judicature Act.

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

See: Section 33 of the Judicature Act.

A child has been defined as any person below 18 years of age

See: Action 2 of the children Act.

The child here is 6 years of age (see birth certificate on the court record, Annexure "F").

She is therefore a child, within the meaning of the children Act.

Issue No. 1 – whether the application will be for the welfare and in the best interests of the child?

In making any decision relating to a child, the welfare of the child is paramount.

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

Counsel for the applicant, Mr. Isaac Mugume submitted that;

The child was found by one Nabasinde, abandoned at United Christian Church located in Kikoni Makerere, on the 5th of September, 2004.

That announcements were made at church located in Kikoni Makerere, but there was no response. That the child was then taken to the Child Care and Family Protection Unit at Wandegeya, which carried out investigations but failed to locate the child's parents.

Mr. Mugume submitted that, the child was eventually referred by the Probation Officer, Mwanga II Road who referred them in turn to Open Door Children's Home for Care and custody.

Mr. Mugume argued that, according to the Police Report and that of the Probation Officer, (see background report on the court record) – Open Door applied for a Care Order in respect of the child from Mwanga II Road, Magistrate court (see Care Order on the court record).

Mr. Mugume contended that, in an attempt to trace the relatives of the child, an advertisement was placed the New Vision calling on the relative of the child to come and claim him– see Newspaper advert on the court record) but no one has come to claim her.

Counsel submitted that, the Probation Officer has recommended placement of the child for fostering, as the child is a vulnerable child, in need of care and protection and that the Scott family are suitable guardians – see Probation officer's Report) on the court record.

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, Joyce Kusiima.

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

Counsel submitted that, the applicants are American citizens aged 36 years and 35 years of age respectively – (see annexure "A).

That the applicants are married, (see copy of their marriage certificate marked Annexure B).

Counsel contended that, the applicants have two biological children aged 8 and 4, respectively – (see Annexure C)

Counsel submitted that, the applicants are residents of 105 Cheryl Drive Doumington PA 1932 – USA.

Further, that the first applicant is a teacher, employed by Westchester Aid School District – (see Annexure D) and that they are financially stable – (see Annexure F and C).

Mr. Mugume contended that, the applicants have no criminal record – (Annexure J and have both been evaluated medically and found not to have any diseases – (see Annexure “K”).

That the applicants had wanted to have 3 children but for the stress suffered by the 2nd applicant during her last pregnancy, they decided that it would not be in her best interest to carry another pregnancy and opted to adopt.

In view of the above, court is of the view that, the applicants will provide the child with a home and have two children who will help the child to integrate into the family and they are gainfully employed and can cater for the child’s welfare needs.

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

1. The applicants are appointed legal guardians of Joyce Kusiima.
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 fulfill their parental obligations and
6. The applicants are permitted to adopt the child in the USA.

7. The applicants are directed to file a report, once every year regarding the state of welfare and development of the child with the Registrar Family Division, High Court and to continue to do so until the child is 18 years of age or until directed otherwise.
8. The court makes no orders as to costs.

Margaret C. Oguli Oumo

JUGDE

29/10/2010

Present:

1. Isaac Mugume, counsel for the applicants
2. Betty Lunkuse – court clerk
3. Oliver Nantamu – Reseach Assistant