

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
FAMILY CAUSE NO. 116 OF 2010
IN THE MATTER OF RACHAEL MIRIAM NASASIRA
AND
IN THE MATTER OF AN APPLICATION FOR A GUARDIANSHIP ORDER BY
MATHEW BRENT WILSON AND MICHELLE MCBENGE WILSON
BEFORE: HON. LADY JUSTICE MARGARET C. OGULI OUMO

RULING:

The applicants Mathew Brent Wilson and Michelle McBenge Wilson, bring this application under **Article 139(1)** of the Constitution of Uganda 1995, **SS 14** of the Judicature Act cap. 13, **SS 2, 3, 4 and 5** of the Children Act cap.59, for orders that;

1. The applicants be granted legal guardianship of the child Rachael Miriam Nasasira, with full parental rights and responsibilities.
2. Consequently upon being appointed legal guardians of the infant, the applicants be at liberty to obtain a Ugandan passport for the infant and be permitted to migrate with the infant to the United States of America where the applicants reside in order to provide parental guidance and cater for the infants education, guidance, shelter, clothing, medical needs, maintenance and the basic necessities of life.
3. Costs of the application be provided for.

The application is supported by the affidavit of the first applicant dated 5th May, 2010.

The grounds of the application are briefly as follows:

- a) That the child was abandoned and efforts to trace the child's parents and relatives proved futile.

- b) That the child being in need of care and protection was committed to the care of Loving Hearts Babies Home.
- c) That the applicants are ready and willing to migrate with the child to the United States of America where they reside and to provide the child with the love, warmth and a healthy family environment.
- d) That the applicants have been found to be suitable adoptive parents by Probation and Social Welfare Officers in their country of origin.
- e) 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. Isaac Ekirapa Obiro.

The High Court has original unlimited jurisdictions over all matters in Uganda, under **Article 139(1)** of the Constitution of Ugandan and **section 14** of the Judicature Act.

In the exercise of that jurisdiction, the High Court has powers to grant such orders as are necessary in the interests of justice, and to prevent the abuse of court process. This has been provided for under **section 98** of the Civil Procedure Act.

Issue No. 1 -Whether the application is for the welfare and best interest of the child?

In **Section 2** of the Children Act, a child has been defined as any person below 18 years of age.

The child here is 1 year and one month, having been born on 14/8/09 in Mbarara Regional Referral Hospital to one Nasasira Rachael. This is supported by Annexure “C” on the court record.

Mr. Obiro submitted that, efforts were made to trace the parents and an advertisement was placed in Monitor Newspaper of 1st February, 2010, but since that time no one has come up to claim the child. A copy of the advert marked Annexure “D” is attached on the court record.

In view of the above, court is of the view that the order if granted will be for the welfare and best interest of the child, for a babies' home is supposed to be a transitory institution for the child's immediate care and custody, and this is supported by **section 58** of the Children Act.

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

The applicants are American citizens and this is supported by copies of their passports on the court record.

Counsel submitted that, the applicants got married on 18th May, 2002, the copy of their marriage certificate on the court record

Counsel submitted that the applicants have one biological child, Jessy Wilson aged 3 years, also in court, so it is courts' view that child will not have difficulty integrating into the applicants' family.

Mr. Obiro contended that, Mr. Mathew is employed as a Pastor with First Priority Church of Alabama and Michelle is employed as a Library Media Specialist with Jefferson County Board. Letters confirming their employment are attached on the court file.

Counsel submitted that Mathew holds a Degree in Business Administration and a Masters Degree in Divinity, and Mitchell holds a Degree in Early Childhood Elementary Education and a Masters Degree in Library and Information Science. Certified copies of their academic documents are attached on the court record.

Mr. Obiro further submitted that, the applicants learned about the child from the Director of Loving Hearts and decided to take him, adopt him and care for him as their own.

Further, that the applicants have been found fit to be adoptive parents by Life Line Children services, operating in Alabama. A home study report to that effect is attached on the court record.

The applicants have no criminal record and clearance reports are attached to the applicants' respective affidavits.

The applicants are free from any diseases, physical impairments that could endanger the child.

Counsel further submitted that the applicants have not given any money to anyone or ever promised to give money to any one, neither have they received any money from anyone in respect of the proposed orders.

In view of the above, court is of the view that, the applicants are suitable guardians for the child.

Issue No. 3 – whether the child should migrate with the applicants to the USA and they accept him there?

Under **Article 34(1)** of the constitution of Uganda, children have a right to know and to be cared for by their parents, entitled by law to bring them up.

Under **section 4 (1)** of the children Act, a child has a right to live with his or her parents or guardians.

In view of the above, court is of the view that it is the child's right to migrate with the applicants so that he can live with them and they will be able to care and bring him up.

Further, once adopted, the child stands to benefit since the applicants can be able to fix his residence permanently in the USA, and he can benefit as the applicants' son in terms of benefits like, medical insurance which is available only to biological children and adoptive children.

The child has no known relative in Uganda and an institution where he now stays is not the best environment for a child to grow up in.

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

1. The applicants, Matthew Brent Wilson and Michelle Mubenge Wilson, are appointed the legal guardians of the child, Racheal Miriam Nasasira

2. The applicants are directed to register the order with the 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 to renew it from time to time as required by the law.
5. The applicants are permitted to travel out of Uganda with the child.
6. The applicants are permitted to adopt the child in the USA
7. The applicants are directed to file a report once every years regarding the state of the welfare and development of the child with the Registrar, Family division High court Kampala, 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

1/10/2010

Present:

1. Mr. Obiru Isaac, counsel for the applicants.
2. The applicants.
3. Betty Lunkuse, court clerk
4. Nantamu Oliver, Research Assistant.